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Commissioner/Ontario

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# ANNUAL REPORT

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Information and Privacy  
Commissioner/Ontario

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# ANNUAL REPORT

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Information and Privacy  
Commissioner/Ontario  
Commissaire à l'information  
et à la protection de la vie privée/Ontario

June 27, 1989



The Honourable Hugh Edighoffer, M.P.P.  
Speaker of the Legislative Assembly

Dear Sir:

Pursuant to Section 58 of the *Freedom of Information and Protection of Privacy Act, 1987*, I have the honour to present my first Annual Report for the year ending December 31, 1988.

Yours truly,

Sidney B. Linden  
Information and Privacy Commissioner/Ontario







## ***NOTE TO READERS:***

Certain words used in the text of this Report have a special meaning within the context of the *Freedom of Information and Protection of Privacy Act, 1987*. These words have been defined in order to assist readers:

### ***Compliance:***

Adherence by institutions to the requirements of the *Act*, including provisions relating to both access to information and protection of personal privacy.

### ***General Record:***

Any record of information, other than a record containing personal information, which is held by an institution.

### ***Head:***

The minister or other designated person responsible for making decisions under the *Act* on behalf of an institution.

### ***Information:***

Any record held by an institution, including both general records and personal information.

### ***Institution:***

A government of Ontario ministry or agency that is included within the scope of the *Act*.

### ***Personal Information:***

Any information about an identifiable individual held by an institution.

### ***Scheduled Institution:***

An agency that falls within the scope of the *Act* by virtue of inclusion on a schedule attached to the *Act*.



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## COMMISSIONER'S MESSAGE

The *Freedom of Information and Protection of Privacy Act, 1987* came into force on January 1, 1988. A great deal of preparation took place before that date to enable the Office of the Information and Privacy Commissioner to open its doors to the public on time. Bill 34 received third reading on June 25, 1987 and was given Royal Assent on the last day of the 33rd Legislature - June 29. The *Act* requires that the Commissioner be appointed, as an Officer of the Legislature, by the Lieutenant-Governor-in-Council on address of the Assembly. This could not occur until after the Legislature reconvened following the September 10 provincial election. I was asked to serve as Information and Privacy Commissioner in July of 1987 and began to work on a contractual basis in August. I was officially appointed by Order-In-Council on November 25, 1987 during the 1st Session of the 34th Legislature.

The period between my appointment as Commissioner and the official commencement of the *Act* was taken up with organizational matters, research and education. I consulted with my federal and provincial counterparts - the Information Commissioner of Canada, Inger Hansen, the Privacy Commissioner of Canada, John Grace, and Marcel Pépin, who was then the President of the Quebec Commission on Access. I contacted acknowledged experts in the fields of access to information and protection of privacy issues in Canada and the United States, in an effort to benefit from their experience. I also sought the advice of administrative law experts, both academics and practitioners, on how to devise an appeal procedure that would comply with the procedural requirements of the *Act*.

A considerable amount of time in the early days was spent on administrative matters - locating office space, buying furniture, hiring staff, creating a corporate identity, designing internal systems, and working on budget proposals.

At the beginning of 1988 our staff numbered 10 employees, and we were all preparing for our first appeals.

During the course of our first year, we refined our appeal procedures, conducted inquiries, and issued a total of 36 Orders covering 79 appeals. We also successfully mediated 105 appeals. We continued to work on administrative systems for our own office, grew to a staff of 29, expanded our office space, created forms, wrote and distributed a brochure, published our "Newsletter" and "Summaries of Appeals", and developed a computer tracking system to help ministries and agencies comply with the reporting requirements of the *Act*.

Along with other members of our staff, I conducted training sessions, participated in conferences, and travelled to other jurisdictions to learn more about freedom of information and protection of privacy issues.

Throughout this eventful first year, we have been assisted and encouraged by the co-operation received from staff at Management Board of Cabinet's Freedom of Information and Privacy Branch. We are also gratified by the positive working relationship that has developed between our agency and the many Freedom of Information and Privacy Co-ordinators from various ministries and agencies who themselves were struggling to fulfil their own responsibilities and duties under this new legislation. In my view, everyone connected with the *Act* did an excellent job in this first year and should be commended for accomplishing so much in such a short period of time.

I particularly want to thank the members of my own staff for their patience, hard work and dedication in helping to steer this agency through our "start-up" year. The tasks facing us were sometimes difficult, but always challenging and interesting.

Now that many of these start-up issues are behind us, we have taken a deep breath and begun to concentrate on the far-reaching policy implications of this *Act*. Administering the *Freedom of Information and Protection of Privacy Act, 1987* continues to be a demanding task, but we are all very optimistic and ready for the challenges that lie ahead.

# MANDATE

From a set of principles enunciated by the Commission on Freedom of Information and Individual Privacy (the "Williams Commission") in the early 1980s, the concepts of access to government-held information and protection of personal privacy have now been codified in Ontario's *Freedom of Information and Protection of Privacy Act, 1987*. Chief among these principles is the integration of both of the concepts in one statute.

One of the challenges facing the Information and Privacy Commissioner is to uphold these separate values and to strike the proper balance, when necessary, between the public's right to know and an individual's right to confidentiality of personal information.

The *Act* requires government institutions to make initial determinations regarding the proper application of the law. However, the *Act* also recognizes that these decisions are sometimes difficult and complex, and that, in the words of the *Act*: "decisions on the disclosure of government information should be reviewed independently of government." The *Act* gives this responsibility to the Commissioner, and to ensure his independence, the Commissioner is made an Officer of the Legislature, reporting directly to the Assembly.

One of the Commissioner's key functions is to receive and consider appeals from members of the public who have either been refused access to government of Ontario general records, or have been denied access to their own personal information. Any decision made by a head under the *Act* may be appealed to the Commissioner.

The *Act* also recognizes that the adequate protection of personal privacy is contingent on government institutions conforming to certain standards regarding the collection, storage, dissemination and ultimate disposal of personal information. The Commissioner is responsible for ensuring that the standards established by the *Act* and its regulations are adhered to. If he finds, as a result of an investigation, that a government institution's personal information practices contravene the *Act*, the Commissioner is empowered to order the institution to cease a collection practice, or to destroy records containing personal information.

The *Act* also gives the Commissioner an advisory role. Whenever proposed legislation or new government programs include provisions with privacy protection implications, the Commissioner can offer his comments.

The experience of other jurisdictions indicates that the effectiveness of the new rights granted under freedom of information and privacy legislation is directly related to the public's knowledge of those rights. To ensure public awareness, Ontario's Commissioner is authorized to conduct public education programs and provide information on the Commissioner's role and activities.

The Commissioner can also conduct research on any matter relating to the purposes of the *Act*. Because we live in what can accurately be characterized as "the information society", innovative technologies continue to expand the role of information as a commercial, scientific and social decision-making tool. Although there are widely accepted benefits to this kind of technological advancement, the *Act* recognizes the need to carefully monitor and assess the impact these changes will have on personal privacy and access to information.

Finally, the *Act* recognizes the value of active public participation in the implementation of rights established by the new law by allowing members of the public to make complaints and express opinions regarding the operation of this new legislation.



# ORGANIZATION

The Office of the Information and Privacy Commissioner is comprised of the Commissioner's office and three Branches - Administration and Communications; Legal Services; and Compliance and Investigations.

## A. Commissioner's Office

The Commissioner's overall mandate encompasses several functions. Most of the day to day administrative and operational responsibilities have been delegated to his professional staff. However, as the agency's chief executive officer, the Commissioner provides overall administrative and policy direction. The agency's three branch Directors report to the Commissioner.

To date the Commissioner has not delegated his responsibility with respect to the conduct of inquiries and issuance of binding orders. During the course of an appeal, if a settlement between an appellant and the government institution is not fully successful, the Commissioner must conduct an inquiry and issue a binding order that disposes of the matter. All inquiries and orders are processed through his office.

The Commissioner's office also maintains ongoing relations with the Freedom of Information and Privacy Branch of Management Board of Cabinet, the various offices and departments of the Office of the Assembly, the Board of Internal Economy, and the Standing Committee on the Legislative Assembly, regarding all matters affecting the operation of the *Act*.

The Commissioner's office co-ordinates policy research and development for the agency, and maintains a small research library. The Commissioner is assisted by an executive assistant, a senior policy advisor and an administrative assistant who also acts as the registrar of appeals.

During the first year of operation, the Commissioner and his senior staff have been closely involved in the start-up of the agency, determining staff requirements and the most appropriate organizational structure, developing practices and procedures for an effective appeal process, conducting inquiries, and issuing orders.

In addition, a number of long-term issues have been under consideration by the Commissioner, including an

analysis of the confidentiality provisions that are to be reviewed by the Standing Committee on the Legislative Assembly, and the implications of the extension of the *Act*'s jurisdiction in 1991 to cover some 3,000 local government bodies. The Commissioner's Office must assess the organizational and operational impact of this expanded jurisdiction, and determine the best way of applying the principles of the *Act* to the municipal context.

Finally, as part of his educational role, the Commissioner has spoken to a wide variety of groups and organizations about the impact of Ontario's *Freedom of Information and Protection of Privacy Act*, 1987.

## B. Administration and Communications

This branch is responsible for providing general operational support, and implementing administrative and human resource policies and practices for the agency. The branch Director and his staff prepare, administer and monitor the agency budget; conduct financial analyses; and provide support services, including purchasing, equipment maintenance, printing, and office leasing. The branch also performs human resource functions, including recruitment, and staff training and development.

The Administration branch acts as the principle contact for the various offices and departments of the Office of the Assembly, as well as the Board of Internal Economy. Office security and French language services are also coordinated by this branch.

During the first year, the Director performed a number of start-up administrative functions, including providing the agency with the necessary equipment, furniture and office space; recruiting full time staff and project consultants; developing office policies and procedures; and generally assisting the Commissioner in planning for the development of the agency.

In addition, the agency installed a sophisticated security system in its offices to ensure the adequate protection of records transferred from various government institutions as part of the appeal process.

The communications function also comes within the purview of the Administration branch. Headed by a Manager, this unit is responsible for the agency's com-

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munity outreach and public education programs. It also handles media relations and provides information services to the general public regarding the operation of the *Act*. Public speaking engagements by the Commissioner and the staff are arranged through this unit.

### C. Legal Services

The Legal Services branch provides all required legal support to the agency, and is responsible for processing appeals made to the Commissioner under the *Act*. The branch consists of two units and is headed by a Director.

The appeals unit is comprised of a Manager and eight Appeals Officers. The unit is responsible for processing appeals filed under the *Act*, which involve denial of access to general records, third party information, access to personal information, and correction of personal information on file with the government. Staff deal directly with appellants and various government institutions in an attempt to mediate settlements of issues arising in the appeals, and also assist with cases which proceed to the inquiry stage.

The other unit, legal support services, provides opinions and other general legal services for the agency. Duties include the analysis of comparative legislation in other jurisdictions; reviewing relevant court decisions; preparing commentaries on emerging information and privacy issues; and providing legal opinions to Appeals Officers on issues that arise in the context of appeals.

As with any new legislation, a large number of legal issues arise that require in-depth legal research. A staff of two lawyers assist the Director in preparing legal memoranda dealing with various aspects of the *Act*, the precedents and court cases of other jurisdictions.

### D. Compliance and Investigations

The Compliance and Investigations branch is primarily involved in ensuring that provincial institutions comply with the various provisions of the *Act*. Investigations conducted by this branch deal with both access to information and privacy protection. The branch consists of three units, and is headed by a Director.

The *Act* requires that Ontario government institutions adhere to certain standards and practices intended to protect the integrity of personal information in the custody and control of these institutions. The compliance investigations unit is responsible for ensuring that institutions properly discharge this responsibility. This unit is comprised of a Manager and four Compliance Auditors, who conduct investigations of compliance issues which arise either in the context of an appeal or as a result of a complaint from a member of the public. The unit also monitors government policies dealing with the collection and disposal of personal records, and provides advice and consultation on the privacy implications of existing or planned computer systems in various government institutions.

During the first year of operation, the compliance investigations unit concentrated on developing and implementing audit practices and procedures applicable to the context of privacy protection, and began to conduct a number of reviews and investigations into specific practices in place in several institutions.

This branch also contains a computer systems unit which is responsible for the development, implementation and ongoing administration of the agency's computer-related requirements. During the first year of operation, this unit designed and introduced a computerized tracking system for external users, several databases for internal use, automated reports, and other related projects, all of which operate on a local area network. The agency's word and data processing requirements are also handled by this unit.

The third part of this branch is the research and statistics unit which provides research support and program evaluation for various aspects of the Commissioner's mandate. The main focus of the unit over the past year has been the monitoring of data collection techniques used by all scheduled institutions, to ensure consistency of methodology in the various reporting requirements outlined in the *Act*. The unit has also been involved in other research-related activities, including the design of forms, surveys and questionnaires; a detailed study and analysis of trends, methodologies and information practices of government institutions; development of effective procedures for the compilation and tracking of information throughout the government; reviews of relevant literature; and the collection and compilation of statistical data from all scheduled institutions for their inclusion in the Commissioner's Annual Report.



# PRACTICES AND PROCEDURES

## A. Appeal Process

Whenever a new agency is created by statute and required to act as an administrative tribunal, one of the more difficult tasks facing its decision-makers is the design of the agency's practices and procedures. The enabling legislation may set out specific procedural rights, and in many instances the operation of the agency is made subject to Part I of the *Statutory Powers Procedure Act* (the "S.P.P.A."). Among other things, the S.P.P.A. provides for reasonable notice of hearings; the right to representation by counsel or agents for all parties to a proceeding; the right of the parties and their representatives to call and examine witnesses, present arguments and submissions, and conduct cross-examinations of witnesses; and the requirement that all final decisions and orders be in writing, with the corresponding right of any party to request written reasons for the decision.

The *Freedom of Information and Protection of Privacy Act, 1987* (the "Act") provides that the S.P.P.A. does not apply to an inquiry conducted by the Commissioner. This does not mean, however, that the Commissioner has absolute discretion to determine the inquiry process. Section 52 of the *Freedom of Information and Protection of Privacy Act, 1987*, in addition to setting out the powers of the Commissioner during an inquiry, also contains several provisions relating to the procedural rights of persons participating in an inquiry. For example, anyone involved in an inquiry may be represented by counsel or an agent. Also, the appellant, the head, and any affected party must be provided with an opportunity to make representations to the Commissioner, although the form of those representations is left to the discretion of the Commissioner. Section 52 also provides that no person is entitled to be present during, or to have access to or to comment on representations made to the Commissioner by any other person. Moreover, the section permits an inquiry to be conducted in private, at the Commissioner's discretion.

The Act gives the Commissioner considerable latitude in devising procedures, and the design of these procedures is necessarily shaped by the special nature of the issues and decisions the Commissioner is required to make. For example, some appeals involve disputes relating to records containing personal information or records under consideration by the Executive Council. Both of these types of records are exempt from disclosure under the

Act. If the contents of any such records were disclosed to the public during an inquiry, this would render the exemption and the appeal meaningless, so it is necessary to design procedures which address these unique issues while at the same time upholding the basic principles of fairness. Apart from the procedural rights mentioned above, and the requirement that following unsuccessful mediation the appeal proceed to an inquiry, the Act is largely silent as to how the appeal process should work and what procedures the Commissioner should employ. While the procedures followed during the appeal process will continue to evolve as the Commissioner's Office gains more experience, they will always be guided by the overall principle of fairness.

What follows is an outline of the appeal process, from the mediation stage through to an inquiry and a binding order.

Subsection 50(1) of the Act gives a person who has made a request for:

- (a) access to general records;
- (b) access to personal information; or
- (c) correction of personal information;

the right to appeal any decision of a head under the Act to the Commissioner. A third party who has been given notice of a request for access to general records also has a right of appeal.

Once the head has made a decision, the requester has 30 days to file a written notice of appeal with the Commissioner.

After an appeal is filed, the head of the institution and any affected parties are notified of the appeal. It is the Commissioner's practice to attempt to mediate all appeals, although in exceptional circumstances an appeal may proceed directly to an inquiry.

Mediation begins when an Appeals Officer is assigned to the case. The Appeals Officer first ascertains the issues arising from the appeal and determines the respective positions of the parties. If necessary, the Appeals Officer will contact both the appellant and the government representative to ensure there are no misunderstandings. Where access to a particular record is in dispute, the Appeals Officer will review the record and attempt to

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mediate a settlement between the parties. If mediation is not possible or only partially successful, the appeal proceeds to an inquiry. At this stage the Appeals Officer prepares a report which sets out the facts and issues arising from the appeal.

Once the inquiry stage is reached, a formal Notice of Inquiry is sent to all parties, together with a copy of the Appeals Officer's Report. The parties are advised of their right to make representations to the Commissioner with respect to the issues arising from the appeal, and although the Appeals Officer's Report attempts to identify all relevant issues, it is made clear to the parties that they are free to address any other issues in their representations.

The Commissioner's normal practice is to require written submissions, and the parties are provided with a reasonable period of time to prepare their representations. In some cases it is more appropriate for representations to be made orally, and in others the Commissioner may decide that the circumstances warrant a more public airing of the issues. These decisions are made on a case-by-case basis, depending on the particular circumstances of the appeal.

The representations of the parties are reviewed and analysed, and when the Commissioner has all the necessary information, he prepares a written order disposing of all issues in the appeal. A copy of the Commissioner's Order is sent to each party. The order is also summarized and published in the agency's "Newsletter" and "Summaries of Appeals".

## **B. Compliance and Investigations**

The *Act* requires the Commissioner to undertake an annual review of the effectiveness of the *Act*, and to assess the extent to which Ontario government institutions are complying with the *Act*'s provisions. After completing his review, the Commissioner is authorized to make recommendations regarding the practices of individual ministries and agencies.

To discharge these responsibilities, the Commissioner must investigate, monitor, assess, evaluate, audit and

generally oversee how the various institutions have implemented the *Act* and its regulations.

The Commissioner's compliance function operates at two levels.

First, the Commissioner has a general responsibility for ensuring that government institutions are complying with the *Act* as a whole. The scope of this responsibility encompasses matters such as compliance with statistical reporting requirements; proper processing of requests for information; a wide range of records management issues; or whether an institution provides a public reading room.

On a more specific level, the Commissioner must satisfy himself that institutions have complied with those sections of the *Act* that seek to "protect the privacy of individuals with respect to personal information about themselves held by institutions and to provide individuals with a right of access to that information." The *Act* establishes certain requirements dealing with the collection, retention, use, disclosure, disposal and security of personal information. In addition, Management Board of Cabinet is responsible for ensuring that regulations are in place which establish uniform administrative standards in each of the above-mentioned areas.

The Compliance and Investigations branch of the Commissioner's Office will become involved either when a public complaint has been received by the Office, when an appeal is received that raises compliance or privacy issues, or when the Commissioner determines that a particular issue warrants investigation.

In instances where complaints are filed by members of the public, a compliance investigator will contact both the complainant and representatives of the institution to determine the validity of the complaint. When this investigation is completed, a report is prepared which assesses the matter for consideration by the Commissioner.

Appeals often involve a number of issues besides the denial of a request for access. These issues could include compliance concerns such as the manner in which personal information can be retrieved, or the extent to

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which institutions are complying with the *Act*. A compliance issue could be limited to one specific aspect of the operation of the institution, or could have ministry-wide implications. In either case, compliance investigators are directed to conduct a thorough audit of the institution's practices and procedures, and to report their findings to the Commissioner.

The Compliance and Investigations branch is also involved in systematic reviews of institution operations, where a particular ministry or agency recognizes the need to evaluate and perhaps change its administrative and records management practices in order to comply with the provisions of the *Act*. Because the *Act* imposes new standards and practices for all government institutions, it is expected that most ministries and agencies will review their procedures and practices; the Compliance and Investigations branch is available to assist in this process.

The systematic reviews conducted by the Commissioner's staff focus on such matters as record keeping practices, security systems, and the various storage, retrieval and disposal practices used by institutions in dealing with the personal information in their custody and control.

In some cases, an investigation or audit could result in recommendations by the Commissioner that a particular institution change its practices and procedures in order to comply with the *Act*. In more serious cases, the Commissioner may order an institution to cease a collection practice, or to destroy collections of personal information that contravene the *Act*. If the Commissioner is considering imposing an order, subsection 59(b) of the *Act* requires him to first provide the head of the institution with an opportunity to present arguments to the Commissioner.



## SECTION 58(2): EFFECTIVENESS REVIEW

Subsection 58(2) of the *Act* requires the Commissioner to undertake a comprehensive review of the effectiveness of the *Act* in providing access to information and protection of personal privacy. This subsection further stipulates that at least three matters must be included in the Commissioner's review, namely:

- a summary of the nature and ultimate resolution of appeals;
- an assessment of the extent to which institutions are complying with the *Act*; and
- the Commissioner's recommendations regarding practices of particular institutions and proposed revisions to the *Act* and regulations.

These matters will be dealt with separately in this section of the Annual Report.

The wording of subsection 58(2) suggests that the Commissioner's review need not necessarily be restricted to the three matters listed above. Rather, all relevant and pertinent matters should be included, in order that the Commissioner's Annual Report comprise a comprehensive review of the *Act*.

To appreciate the effectiveness of any new legislation, it is often useful to look at the new provisions in the context of what preceded it.

Before the *Freedom of Information and the Protection of Privacy Act, 1987* came into force on January 1, 1988, access to government information in Ontario was largely discretionary. It was up to individual ministers to decide whether the public interest warranted the release of specific records or information, and, as the Williams Commission discovered, this resulted in inconsistent and ad hoc practices. The public had no legal right to ask for, let alone receive, government information, and the civil service oath of secrecy acted as a further disincentive to disclosure of records in the custody and control of the provincial government bureaucracy.

This tradition of official secrecy was quite understandable, since it was inherited from Great Britain as part of our constitutional heritage. However, it is fair to say

that, prior to the passage of the *Act* in 1987, principles of secrecy were deeply entrenched at all levels of the Ontario government.

In passing the *Freedom of Information and Protection of Privacy Act, 1987* the Ontario Legislature broke with this inherited tradition, and, for the first time, gave the public a legal right of access to government records and to their own personal information. This right to physical access alone, however, will not achieve all of the *Act's* goals and objectives. In the long run, the success of the *Act* will be measured in part on the basis of how well it has succeeded in changing the attitudes of government officials as custodians of information. The effectiveness of the *Act*, therefore, must be measured in qualitative as well as quantitative terms.

In the following pages, statistical data along with other interpretive material will be presented. The aim of this presentation is to provide a comprehensive review of the *Act* in its first year of operation.

### A. Summary of The Nature and Ultimate Resolution of Appeals

Subsection 58(2)(a) of the *Act* requires the Commissioner to summarize the nature and ultimate resolution of appeals. This summary is intended to provide an overview of the appeal process at both the mediation and inquiry stages.

In order to provide the proper context for analysing the appeal process, it is necessary to begin by looking at the initial requests for general records or personal information made to the various ministries and agencies covered by the *Act*. The statistical material provided below, has been gathered from Ontario government institutions pursuant to section 34 of the *Act*, which requires heads of institutions to report the following matters to the Commissioner:

- (a) the number of requests for access to records made to the institution;
- (b) the number of refusals by the head to disclose a record, the provisions of this *Act* under which

disclosure was refused, and the number of occasions on which each provision was invoked;

- (c) for each provision of this *Act* in respect of which an appeal of a decision of a head has been commenced, the number of appeals commenced;
- (d) the number of uses or purposes for which personal information is disclosed where the use or purpose is not included in the statements of uses and purposes set forth under clauses 45(d) and (e);
- (e) the amount of fees collected by the institution under section 57; and
- (f) any other information indicating an effort by the institution to put into practice the purposes of this *Act*.

## **B. Statistics Relating to Requests Received By Ministries and Agencies**

The statistics on requests for general records and personal information were obtained from the various institutions, who were individually responsible for collection and tracking. A "Year-End Statistical Report" form was sent by the Commissioner's Office to all institutions, together with a detailed instructional guide. A sample copy of the Year-End Statistical Report may be found in Appendix D.

In addition, the Commissioner's Office developed a computerized tracking program to assist institutions in their data-collection efforts. By using the computerized tracking program, institutions were able to eliminate manual completion of the Year-End form, since the report was automatically printed through the program.

The computerized tracking system was developed with two main objectives in mind: to provide an efficient tool for the management of individual requests and appeals; and to develop a standardized data collection protocol. The standardization of data collection is necessary to ensure that results reported by individual institutions can be aggregated on a consistent basis, thereby enabling meaningful comparisons to be made.

Those institutions which used the computerized tracking system received training and support from staff of the Commissioner's Office, and were provided with software updates as improved features were added throughout the year.

Upon receipt of the data from the institutions, the Commissioner's Office ran a number of error checks to ensure that the figures reported by specific institutions were internally consistent. However, it was not possible to verify the accuracy of actual figures reported by the institutions prior to aggregating them for statistical analysis, and the figures supplied by institutions have been relied on by the Commissioner's Office as being accurate and comprehensive.

Almost 5,000 requests for general records and personal information were made to Ontario government institutions during the first year of the *Act*'s operation. These requests were quite evenly distributed between requests for general records and requests for personal information: 50.8% or 2,432 requests for general records; and 49.2% or 2,352 requests for personal information (including correction requests). Eighty-nine percent or 4,260 out of the 4,784 requests received were also completed in 1988. The remainder (524 requests) were carried over to 1989, the majority of which (388 or 74%) were requests for general records. One hundred and thirty-five personal information requests and one correction request were also carried over to 1989. These data are presented in Table 1.

Most requests -- 79% or 3,774 -- were made to ministries, while 1,010 or 21% were filed with agencies (Table 2). The greatest numbers of requests were filed with the Ministries of Revenue (786) and Correctional Services (777), which together represent roughly one-third of all requests received government-wide (16.4% and 16.2%, respectively). [It should be noted that these figures do not include the number of requests received by agencies of the respective ministries. All agency requests are listed in Table 3.] The next two ministries to which requests were most frequently made were Community and Social Services (362 or 7.6%) and Health (351 or 7.3%). Thus, roughly half of all the general records and personal information requests were made to these four ministries.

The following ministries also received a significant number of requests during 1988: Attorney General (139),

Labour (122), Transportation (122), Solicitor General (120), Education (115), Consumer and Commercial Relations (110), and Government Services (104). The remaining ministries each received fewer than 100 requests. It should be noted that two agencies, Ontario Hydro and the Workers' Compensation Board, each had a significant number of requests: 323 (6.8%) and 264 (5.5%), respectively, ranking immediately below the top four ministries. All other agencies had fewer than 100 requests.

Table 3 contains a detailed breakdown of all of the requests received and completed by the ministries and agencies covered by the *Act* during 1988.

### Time Taken to Complete Requests

Section 26 of the *Act* requires institutions to respond to requests within 30 days of the date the request was received (with the exception of extensions for purposes of consultation or a large number of records having to be reviewed). The data contained in Table 4 appear to indicate that this requirement is being met in most cases. The great majority -- 80% of all closed cases -- were completed within the stipulated 30-day period. The figure is somewhat higher for personal information (85.5%) than general records (74%).

Of the remaining 20% of cases, 12.9% were completed between 31 and 60 days; 3.7% between 61 and 90 days; and 3.5% in excess of 90 days. These data may also be found in Table 4.

### Dispositions of Requests

In more than three-quarters of the cases -- 77.4% -- all or part of the requested information was disclosed by the institution. Full disclosure was made in 55.7% of the cases, and partial disclosure in 21.7%. In the case of personal information requests, the figures for disclosure were higher -- 90.3%, as opposed to 63.5% for general records. No information was disclosed in 15.6% of all cases (25.4% of general records requests compared to 6.6% of personal information requests), while a refusal to confirm or deny the existence of a record occurred in 6 cases. Requests for information were withdrawn or abandoned in 289 or 6.8% of the cases (11% general records and 3% personal information). These data may be found in Table 5.

### Correction Requests

There were 13 requests for corrections to personal information. Corrections were made in 4 cases, and refused in 8. One correction request was withdrawn.

Of the 8 cases in which corrections were refused, 4 led to Statements of Disagreement being attached to the record. In these 4 cases, it was requested that individuals who had come into contact with the record be notified of the Statement of Disagreement (pursuant to subsection 47(2)(c)). Three notifications were actually sent. Please refer to Table 6 for these data.

### Fee Estimates and Waivers

The reader is once again asked to note that the Commissioner's Office does not have the means to verify figures relating to fee estimates and waivers; they are simply aggregated from the data reported by the various institutions.

According to the figures supplied by the institutions, charging a fee for requested information, either general records or personal information, was considered and estimated in 455 or 10.7% of all completed cases. The great majority of these cases -- 426 or 93.6% -- involved requests for general records. The government's general policy is that no fees should be charged for requests to access one's own personal information; in fact, there were only 2 cases where fees were collected relating to personal information requests.

Of the 455 cases involving estimates, 126 or 27.7% resulted in the fees being collected in whole, and 7 or 1.5% in the fees being collected in part. In the majority of cases where a fee was estimated (322 or 70.8%), however, fees were completely waived.

Information relating to the amount of fees received from the various institutions in this first year was incomplete and unreliable, and has not been included in this Report.

General records requests accounted for 124 out of the 126 cases where fees were collected in whole, and for all 7 cases where fees were collected in part. Data relating to fees may be found in Table 7.



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## Reasons for the Collection of Fees

The most frequent reason given for charging fees was to cover costs of reproducing or photocopying the records requested (39% of cases involving fee collection). Other reasons provided by institutions were shipping or mailing charges (17%); preparation time (16.7%); search time (14.9%); and computer costs (8.4%). These data are presented in Table 8.

## Types of Requesters

In collecting data on types of requesters, Freedom of Information and Privacy Co-ordinators were required to make subjective categorizations, since requesters were not asked to identify which category of requester they fell into. As a result, these data must be considered more interpretive in nature, since they rely upon someone other than the requester to make the appropriate classification.

The types of requesters will be discussed in the context of general records and personal information separately, since most requesters of personal information are, by definition, individuals. Of those who made requests for general records, almost half -- 47.7% -- were individuals. The next most frequent user of the *Act* for general rec-

ords was the business sector (12.6% of requests), followed by researchers (10.4%), the media (9.4%), and various associations/organizations (4.9%). A variety of other sources represented the remaining 15% of requesters.

The data on requesters of personal information (including correction requests) are somewhat ambiguous and should be interpreted with caution. The statistics provided by the institutions indicate that individuals were the source of personal information requests in 66.7% of the cases, while "other" sources represent the type of requester in 28.6% of the cases. Associations requested personal information in 4.0% of the cases (possibly on behalf of members of the association). There were 2 requests for personal information from the media and 3 from researchers. It would appear that there may be coding errors relating to the 88 requests (4%) for personal information categorized as being made by businesses. A business wishing to access files about the business would properly fall under a general records request, whereas an individual within a business making a request for personal information should be categorized as an individual requester.

These data included in Table 9, therefore, should be viewed with some caution.

**Table 1**  
**Types of Requests for Access**

	REQUESTS RECEIVED		REQUESTS COMPLETED		CARRIED OVER TO 1989	
	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>
General Records	2432	50.8	2044	48.0	388	74.0
Personal Information	2338	48.9	2203	51.7	135	25.8
Corrections	<u>14</u>	<u>0.3</u>	<u>13</u>	<u>0.3</u>	<u>1</u>	<u>0.2</u>
<b>TOTAL</b>	<b><u>4784</u></b>	<b><u>100.0</u></b>	<b><u>4260</u></b>	<b><u>100.0</u></b>	<b><u>524</u></b>	<b><u>100.0</u></b>

**Table 2**  
**TOTAL Requests Received and Completed**

	REQUESTS RECEIVED		REQUESTS COMPLETED	
	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>
Ministries	3774	78.9	3378	79.3
Agencies	<u>1010</u>	<u>21.1</u>	<u>882</u>	<u>20.7</u>
<b>TOTAL</b>	<b><u>4784</u></b>	<b><u>100.0</u></b>	<b><u>4260</u></b>	<b><u>100.0</u></b>



Table 3

## Requests Received and Completed in 1988

	REQUESTS RECEIVED		REQUESTS COMPLETED	
	No.	%	No.	%
<b>MINISTRIES</b>				
Revenue	786	16.4	756	17.7
Correctional Services	777	16.2	632	14.8
Community & Social Services	362	7.6	342	8.0
Health	351	7.3	318	7.5
Attorney General	139	2.9	130	3.1
Labour	122	2.6	98	2.3
Transportation	122	2.6	110	2.6
Solicitor General	120	2.5	112	2.6
Education	115	2.5	110	2.6
Consumer & Commercial Relations	110	2.3	91	2.1
Government Services	104	2.2	103	2.4
Environment	96	2.0	81	1.9
Industry, Trade, & Technology	79	1.7	76	1.8
Natural Resources	58	1.2	50	1.2
Agriculture & Food	57	1.1	54	1.3
Housing	55	1.1	42	1.0
Financial Institutions	53	1.1	30	0.7
Human Resources Secretariat	50	1.0	47	1.1
Treasury & Economics	46	1.0	45	1.0
Colleges & Universities	26	0.5	22	0.5
Skills Development	24	0.5	24	0.6
Municipal Affairs	21	0.4	18	0.4
Management Board Secretariat	20	0.4	19	0.4
Tourism & Recreation	17	0.4	15	0.4
Cabinet Office	15	0.3	14	0.3
Francophone Affairs	8	0.2	7	0.2
Culture & Communications	7	0.1	4	0.1
Northern Development & Mines	7	0.1	6	0.1
Citizenship	7	0.1	6	0.1
Energy	6	0.1	5	0.1
Intergovernmental Affairs	5	0.1	4	0.1
Office for Senior Citizens	4	0.1	3	0.1
Office Responsible for Disabled Persons	3	0.1	2	0.0
Ontario Advisory Council on Women's Issues	2	0.0	2	0.0
<b>MINISTRY TOTAL</b>	<b>3774</b>	<b>78.9</b>	<b>3378</b>	<b>79.3</b>

**Table 3 (cont'd.)**

AGENCIES	REQUESTS RECEIVED		REQUESTS COMPLETED	
	No.	%	No.	%
Ontario Hydro	323	6.8	285	6.7
Workers' Compensation Board	264	5.5	233	5.5
Archives of Ontario	98	2.0	86	2.0
Liquor Control Board of Ontario	47	1.0	36	1.0
Development Corporation (and IOC)	44	0.9	44	1.0
Pension Commission of Ontario	40	0.8	23	0.5
Ontario Human Rights Commission	22	0.5	20	0.5
Ontario Board of Parole	21	0.4	20	0.5
Health Disciplines Board	15	0.3	15	0.4
Ontario Securities Commission	14	0.3	7	0.2
Ontario Graduate Scholarship Selection Board	9	0.2	9	0.2
Social Assistance Review Board	9	0.2	8	0.2
Ontario Waste Management Corporation	9	0.2	9	0.2
Pesticides Advisory Committee	8	0.2	8	0.2
Labour Relations Board	7	0.1	4	0.1
Ontario Police Commission	7	0.1	7	0.2
Ontario Heritage Foundation	6	0.1	5	0.1
Local Housing Authorities	6	0.1	6	0.1
Pay Equity Commission	5	0.1	3	0.1
Go Transit	5	0.1	5	0.1
Residential Rental Standards Board	4	0.1	4	0.1
Criminal Injuries Compensation Board	3	0.1	3	0.1
Ontario Lottery Corporation	3	0.1	3	0.1
Assessment Review Board	2	0.0	2	0.0
Ontario Municipal Board	2	0.0	2	0.0
Minister's Advisory Committee on Corrections	2	0.0	2	0.0
Planning and Implementation Committee	2	0.0	2	0.0
Funeral Services Review Board	2	0.0	2	0.0
Lieutenant Governor's Board of Review	2	0.0	2	0.0
Crown Employees Grievance Settlement Board	2	0.0	2	0.0
Advisory Committee on Crime Prevention	2	0.0	2	0.0
Animal Care Review Board	2	0.0	2	0.0
Coroners' Council	2	0.0	2	0.0
Fire Code Commission	2	0.0	2	0.0
Ontario Police Arbitration Commission	2	0.0	2	0.0
Ontario Place Corporation	2	0.0	2	0.0
Ontario Highway Transport Board	2	0.0	0	0.0
Institutions with 1 request each	13	0.3	13	0.3
<b>AGENCY TOTAL</b>	<b>1010</b>	<b>21.1</b>	<b>882</b>	<b>20.7</b>
<b>GRAND TOTAL</b>	<b>4784</b>	<b>100.0</b>	<b>4260</b>	<b>100.0</b>

**Table 4\***

**Time Taken To Complete Requests**

	GENERAL RECORDS		PERSONAL INFORMATION		TOTAL REQUESTS	
	No.	%	No.	%	No.	%
1 -30 days	1513	74.0	1884	85.5	3397	80.0
31-60 days	313	15.3	233	10.6	546	12.9
61-90 days	123	6.0	33	1.5	156	3.7
over 90 days	<u>95</u>	<u>4.6</u>	<u>53</u>	<u>2.4</u>	<u>148</u>	<u>3.5</u>
TOTAL	<u>2044</u>	<u>100.0</u>	<u>2203</u>	<u>100.0</u>	<u>4247</u>	<u>100.0</u>

\* This table excludes correction requests. (The information regarding time to completion was not collected for correction requests.)

**Table 5\***  
**Dispositions of Requests**

	<u>GENERAL RECORDS</u>		<u>PERSONAL INFORMATION</u>		<u>TOTAL REQUESTS</u>	
	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>
All Disclosed	855	41.8	1512	68.6	2367	55.7
Disclosed in Part	444	21.7	477	21.7	921	21.7
Nothing Disclosed	519	25.4	145	6.6	664	15.6
Withdrawn/Abandoned	224	11.0	65	3.0	289	6.8
Refused to confirm/deny	<u>2</u>	<u>0.1</u>	<u>4</u>	<u>0.2</u>	<u>6</u>	<u>0.1</u>
<b>TOTAL</b>	<u><b>2044</b></u>	<u><b>100.0</b></u>	<u><b>2203</b></u>	<u><b>100.0</b></u>	<u><b>4247</b></u>	<u><b>100.0</b></u>

\* Dispositions of correction requests are given separately (Table 6).

**Table 6**  
**Dispositions of Correction Requests**

	<u>No.</u>	<u>%</u>
Correction Made	4	30.8
Correction Refused	8	61.5
Correction WD/Abandoned	<u>1</u>	<u>7.7</u>
<b>TOTAL</b>	<u><b>13</b></u>	<u><b>100.0</b></u>

**Where Correction Refused:**

No. of Statements of Disagreement Attached to Record:	4
Notification of Statement of Disagreement Requested:	4
No. of Notifications Sent:	3



**Table 7**

**Cases In Which Fees Were Estimated**

	GENERAL RECORDS		PERSONAL INFORMATION		TOTAL REQUESTS	
	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>
Collected in whole	124	29.1	2	6.9	126	27.7
Waived in whole	295	69.2	27	93.1	322	70.8
Waived in part	<u>7</u>	<u>1.6</u>	<u>0</u>	<u>0.0</u>	<u>7</u>	<u>1.5</u>
<b>TOTAL</b>	<u><b>426</b></u>	<u><b>100.0</b></u>	<u><b>29</b></u>	<u><b>100.0</b></u>	<u><b>455</b></u>	<u><b>100.0</b></u>

**Table 8**  
**Reasons For Collection of Fees\***

	GENERAL RECORDS		PERSONAL INFORMATION		TOTAL REQUESTS	
	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>
Reproduction	124	38.8	2	66.7	126	39.0
Shipping	54	16.9	1	33.3	55	17.0
Preparation	54	16.9	0	0.0	54	16.7
Search Time	48	15.0	0	0.0	48	14.9
Computer Costs	27	8.4	0	0.0	27	8.4
Other	<u>13</u>	<u>4.1</u>	<u>0</u>	<u>0.0</u>	<u>13</u>	<u>4.0</u>
<b>TOTAL</b>	<u><b>320</b></u>	<u><b>100.0</b></u>	<u><b>3</b></u>	<u><b>100.0</b></u>	<u><b>323</b></u>	<u><b>100.0</b></u>

\* Multiple reasons for the collection of fees could arise out of each instance in which a collection was considered.

**Table 9\***

**Types of Requesters**

	GENERAL RECORDS		PERSONAL INFORMATION		TOTAL REQUESTS	
	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>
Individual	975	47.7	1478	66.7	2456	57.7
Business	258	12.6	88	4.0	346	8.1
Researcher	212	10.4	3	0.1	215	5.0
Media	192	9.4	2	0.1	194	4.6
Association	101	4.9	12	0.4	113	2.7
Other	<u>306</u>	<u>15.0</u>	<u>633</u>	<u>28.6</u>	<u>939</u>	<u>22.0</u>
<b>TOTAL</b>	<u><b>2044</b></u>	<u><b>100.0</b></u>	<u><b>2216</b></u>	<u><b>100.0</b></u>	<u><b>4260</b></u>	<u><b>100.0</b></u>

\* This table includes all completed requests. (Correction requests are included as personal information requests).

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## C. Statistics Relating to The Appeal Process

The previous data on requests clearly demonstrates that most requesters received what was asked for; in other words, there was no dispute between the government institution and the requester over whether certain general records or personal information should be disclosed, or, if there was a dispute, it was resolved to the satisfaction of both parties.

To place the data on the appeals in the proper context, it is useful to briefly review how the appeal process works.

The purpose of the appeal process is to provide a dispute resolution mechanism when requesters and institutions cannot agree on the proper interpretation of various provisions of the *Act*. When a request has been denied, it is clear that the government institution has reached the conclusion that one or more of the exemptions provided in the *Act* apply to justify this denial. The *Act* recognizes a *prima facie* right of disclosure by giving the institution the legal burden of proving that a claim for exemption applies.

The *Act* also recognizes that the institution is not the final decision maker; if a requester is not satisfied with the institution's decision, he or she can ask the Commissioner for an independent review. Mediation can often provide a resolution of disputes, and the Commissioner routinely attempts to settle appeals in this manner. An Appeals Officer will enter into informal discussions between the parties and attempt to formulate a compromise. In many cases the Appeals Officer is successful, or at least partially successful, but other appeals require the Commissioner to determine whether the institution has satisfactorily established the grounds for denying disclosure. These latter cases are resolved by way of inquiry by the Commissioner and the issuance of a binding order.

By the time that an appeal reaches the inquiry stage, there has been considerable airing of the issues, and a great deal of effort has gone into settling the appeal. In many cases, the requester has received some, perhaps even a significant amount of information directly from the institution. During the mediation process, the requester will often receive more information. As a result, the scope of the Commissioner's inquiry may involve a relatively small portion of the records originally requested, and generally the order will not reflect the

extent to which the requester has succeeded in obtaining information under the *Act*. The data that follows should be read in this context.

In the first year of operation, 350 appeals were made to the Commissioner under the *Act*. This represented a weekly average of 6.7 appeals, and a monthly average of 29.2. Only four or 1.1% of all the appeals were filed in person; the remainder were received by mail.

Twenty percent of these 350 appeals were received before the institution had made a final decision regarding the request. They included appeals dealing with preliminary matters such as fee estimates or the possible release of third party information. In the remaining 80% of the cases, the average time between the head's decision and the filing of an appeal was 25 days. Notices of Appeal were sent by the Commissioner's Office to both the head and the appellant an average of 4.5 days after receipt of the appeal.

Roughly 90% of appeals filed in the first year arose from requests made to ministries, as opposed to agencies. This statistic is similar to the breakdown of requests received by government institutions during 1988, when roughly 80% of requests were filed with ministries. A detailed breakdown of appeals involving various ministries and agencies may be found in Table 10 and Figure 1.

### Specific Institutions

The greatest numbers of appeals involved the Ministries of Correctional Services (59 appeals or 16.9%) and Health (45 appeals or 12.9%). This is understandable since these two institutions received the 2nd and 4th largest number of requests under the *Act*. It should also be noted that 31 of the 59 appeals relating to Correctional Services involved the same issue, but with multiple appellants.

There were also a considerable number of appeals arising out of requests made to the following institutions: Solicitor General (29 or 8.3%); Labour (27 or 7.7%); Community and Social Services (25 or 7.1%); Attorney General (21 or 6.0%); and Agriculture and Food (17 or 4.9%). The remaining institutions each had fewer than 14 or 4% of the total number of appeals filed during 1988. Table 10 outlines details of the various ministries and agencies involved in appeals, and Figure 1 provides a graphic presentation of these data.

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## General Records and Personal Information Appeals

The 350 appeals were divided approximately 3:1 between general records and personal information or corrections: 259 appeals or 74% related to requests for general records; 86 or 24.6% involved personal information requests; and 5 or 1.4% dealt with corrections to personal information. These data may be found in Table 11.

This 3:1 breakdown for appeals is quite different from the comparable figures relating to requests. At the request level, the division between requests for general records and personal information was approximately equal: 50.8% for general records and 49.2% for personal information.

### Types of Decisions Appealed

Table 12 outlines the various types of decisions appealed to the Commissioner. These data are divided between general records requests and personal information requests, however, the discussion that follows pertains to the data in total.

The most frequent type of appealed decision involved refusal of access to information. A total of 56.6% of appeals dealt with situations where access was refused either in whole (24.9%) or in part (31.7%). Other types of decisions which were the subject of appeals were: the record does not exist (21.7%); fees (12.6%); release of third party information (4.3%); time extensions (2.9%); the method of access to a record, either obtaining the original or a copy (2.3%); refusal to confirm or deny the existence of a record (1.7%); and refusal of a correction request (1.4%).

### Dispositions of Appealed Cases

The remaining statistics deal only with the 198 appeals completed during 1988. This figure represents 56.6% of all appeals filed with the Commissioner's Office during the first year of operation.

The completed appeals are broken down between those which were disposed of at the mediation stage and those

which continued to the inquiry stage. Table 13 shows that 105 or 53% of the closed cases were completed at the mediation stage, compared to 93 or 47% which were disposed of at the inquiry stage.

If we examine the 105 cases completed during the mediation stage, the great majority -- 87 or 82.9% -- were settled; 6.7% were determined to be non-jurisdictional cases; 9.5% were withdrawn; and 1 case was abandoned.

### Mediated Cases

Of the 87 cases settled during mediation, roughly half (43) were resolved through a settlement between the government institution and the appellant, which resulted in the appellant receiving more information than he or she had received prior to filing the appeal. The remaining 44 cases were settled as a result of an Appeals Officer explaining the provisions of the *Act* to the satisfaction of the appellant. These data may be found in Tables 14 and 15.

### Inquiries

Of the 93 cases resolved at the inquiry stage, 79 or 84.9% were disposed of by an order of the Commissioner. Settlements were reached in 8 of these cases, and 6 appeals were withdrawn at this stage. Table 16 outlines these data, and also provides a breakdown between requester appellants and third party appellants.

The great majority of the 79 cases disposed of by Commissioner's order -- 70 or 88.6% -- involved written, as opposed to oral representations, by the parties to the appeal.

### Orders

The 79 appeals resolved by order during 1988 actually translate to 36 orders issued by the Commissioner. The reasons for this are that a single order is issued in cases involving either: (1) multiple appellants involved in cases dealing with identical issues; or (2) multiple appeals which are inter-related. For example, one order involved 31 different appellants all concerned with the same issue. In another case, an institution decided to



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release information concerning more than one individual, resulting in multiple appeals for different reasons. The Commissioner's order in this case disposed of 10 appeals.

In just over two-thirds of the orders -- 25 or 67.6% -- the head's decision was upheld. The decision was partially upheld in 5 or 13.5%, and not upheld in 18.9% or 7 of these orders. It should be noted that one order involving two appellants resulted in two separate dispositions. This explains why the total number of dispositions relating to orders is 37.

As previously noted, a decision by the Commissioner to uphold a head's decision does not mean that the appellant received none of the originally requested information. Requesters often seek several records from an institution. They may obtain some of those records through an initial decision by the institution and more during the mediation process. It is only the remaining records on which a settlement cannot be reached that become the subject matter of an inquiry by the Commissioner.

### Compliance With Orders

In cases where institutions are ordered to comply with the Commissioner's decision they are provided with an implementation time limit (anywhere from 5 to 30 days) and required to advise the Commissioner's Office when the order has been complied with. These requirements were satisfied in 100% of all orders issued during 1988. The most frequent implementation period imposed by the Commissioner was 20 days, which occurred in 81.3% of the cases.

### Types of Requesters

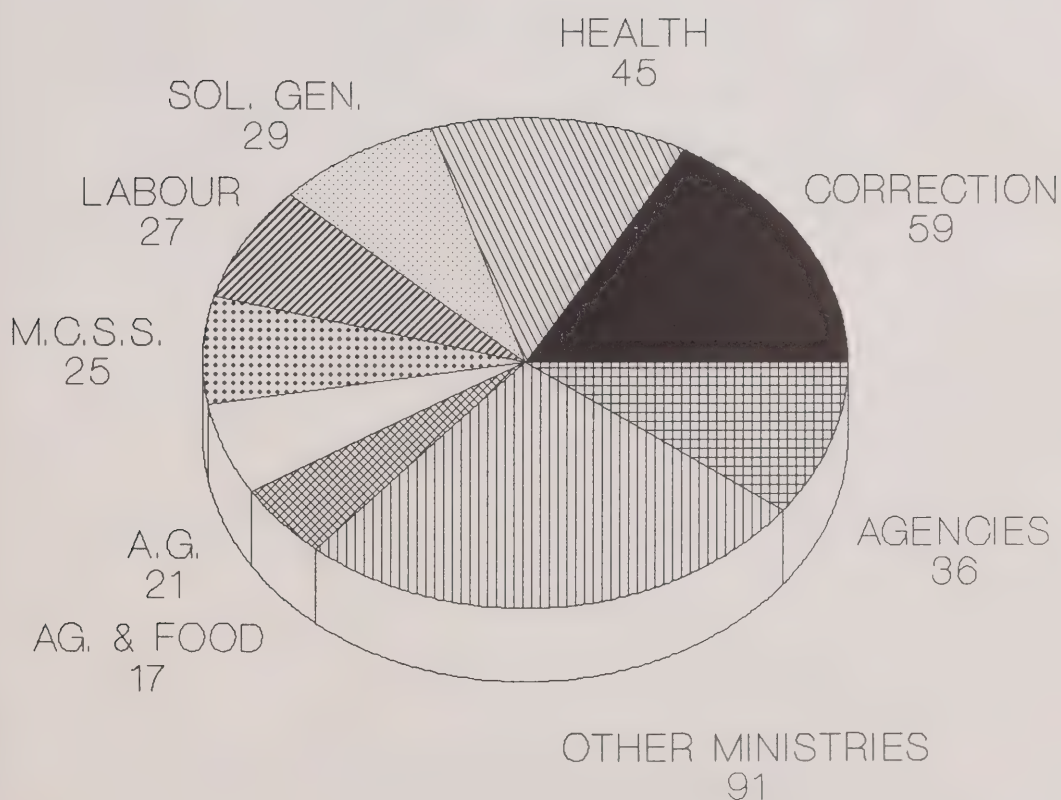
The *Act* does not require requesters to provide information about themselves when filing appeals. On the contrary, the *Act*, by its very nature, acknowledges the need to protect personal information. As a result, efforts to identify the various types of requesters who filed appeals necessarily involves an element of subjectivity. The data that follows should be read with this in mind.

Individuals represented the largest number of appellants, filing 62.5% of all appeals. Researchers represented the next most frequent group at 13.8%, followed by representatives of businesses at 6.0%, and the media at 5.7%. It should also be noted that the vast majority of appellants filed and conducted appeals on their own; only 4.3% of appeals involved agents. These data may be found in Table 17.

**Table 10****Ministries and Agencies Involved in Cases Appealed**

	No.	<u>TOTAL</u> %
<b>MINISTRIES</b>		
Correctional Services	59	16.9
Health	45	12.9
Solicitor General	29	8.3
Labour	27	7.7
Community & Social Services	25	7.1
Attorney General	21	6.0
Agriculture & Food	17	4.9
Environment	13	3.7
Transportation	12	3.4
Consumer & Commercial Relations	11	3.1
Industry, Trade & Technology	11	3.1
Education	8	2.3
Financial Institutions	8	2.3
Revenue	6	1.7
Skills Development	5	1.4
Natural Resources	4	1.1
Municipal Affairs	3	0.9
Management Board Secretariat	2	0.6
Tourism & Recreation	2	0.6
Treasury & Economics	2	0.6
Cabinet Office	1	0.3
Colleges & Universities	1	0.3
Culture & Communications	1	0.3
Government Services	1	0.3
<b>TOTAL MINISTRIES:</b>	<b>314</b>	<b>89.7</b>
<b>AGENCIES</b>		
Workers' Compensation Board	11	3.1
Ontario Hydro	8	2.3
Archives of Ontario	6	1.7
Ontario Human Rights Commission	3	0.9
Liquor Control Board of Ontario	2	0.6
Ontario Labour Relations Board	2	0.6
Ontario Waste Management Corporation	2	0.6
Stadium Corporation of Ontario Ltd.	2	0.6
<b>TOTAL AGENCIES:</b>	<b>36</b>	<b>10.3</b>
<b>GRAND TOTAL:</b>	<b>350</b>	<b>100.0</b>

**Figure 1**  
**MINISTRY AND AGENCY APPEALS**  
**(350)**



**Table 11**  
**Request Type Involved in Appeals**

	<u>No.</u>	<u>%</u>
General Records	259	74.0
Personal Information	86	24.6
Corrections	<u>5</u>	<u>1.4</u>
<b>TOTAL</b>	<u><b>350</b></u>	<u><b>100.0</b></u>



**Table 12**

**Types of Decisions Appealed**

	GENERAL RECORDS		PERSONAL INFORMATION		TOTAL REQUESTS	
	No.	%	No.	%	No.	%
Access refused in part	67	25.9	44	48.4	111	31.7
Access refused in whole	67	25.9	20	22.0	87	24.9
No record exists	61	23.6	15	16.5	76	21.7
Fees/fee estimate	43	16.6	1	1.1	44	12.6
Third party information	15	6.0	0	0.0	15	4.3
Time extensions	7	2.7	3	3.3	10	2.9
Method of access	7	2.7	1	1.1	8	2.3
Refused to confirm/deny	3	1.2	3	3.3	6	1.7
Correction(s) refused	0	0.0	5	5.5	5	1.4
Other	13	5.0	4	4.4	17	4.9
<b>TOTAL APPEALS</b>	<b>283</b>	<b>109.6</b>	<b>96</b>	<b>105.6</b>	<b>379</b>	<b>108.4</b>

**Note:** The total number of decisions appealed exceeds 100% due to the fact that some cases involved the appeal of more than one decision. The percentages reported above reflect the number of times each decision was appealed.

**Table 13**  
**CLOSED CASES: Stage at Which Appeal Disposed**

	<u>No.</u>	<u>%</u>
Mediation Stage	105	53.0
Inquiry Stage	<u>93</u>	<u>47.0</u>
<b>TOTAL</b>	<b><u>198</u></b>	<b><u>100.0</u></b>

**Table 14**  
**Mediation Stage**

	<u>No.</u>	<u>%</u>
Settled	87	82.9
Non-jurisdictional	7	6.7
Withdrawn	10	9.5
Abandoned	<u>1</u>	<u>0.9</u>
Mediated Cases	<b><u>105</u></b>	<b><u>100.0</u></b>

**Table 15**  
**How Cases Settled at Mediation**

	<u>No.</u>	<u>%</u>
Appellant received more information	43	49.4
Explanation of the Act satisfied appellant	<u>44</u>	<u>50.6</u>
<b>TOTAL</b>	<b><u>87</u></b>	<b><u>100.0</u></b>

**Table 16**

**Total Dispositions of All Appeals**

	REQUESTER APPEAL		THIRD PARTY APPEAL		TOTAL	
	No.	%	No.	%	No.	%
<b>Mediation Stage</b>						
Settled	86	45.5	1	11.1	87	43.9
Non-jurisdictional	7	3.7	0	0.0	7	3.5
Withdrawn	10	5.3	0	0.0	10	5.1
Abandoned	1	0.5	0	0.0	1	0.5
<b>Mediation Cases</b>	<b>104</b>	<b>55.0</b>	<b>1</b>	<b>11.1</b>	<b>105</b>	<b>53.0</b>
<b>Inquiry Stage</b>						
<b>Orders</b>						
Head's Decision Upheld	55	29.1	8	88.9	63	31.8
Head's Decision Partly Upheld	5	2.6	0	0.0	5	2.5
Head's Decision Not Upheld	11	5.8	0	0.0	11	5.6
<b>Ordered Cases</b>	<b>71</b>	<b>37.6</b>	<b>8</b>	<b>88.9</b>	<b>79</b>	<b>39.9</b>
Withdrawn	6	3.2	0	0.0	6	3.1
Settled	8	4.2	0	0.0	8	4.0
<b>Inquiry Cases</b>	<b>85</b>	<b>45.0</b>	<b>8</b>	<b>88.9</b>	<b>93</b>	<b>47.0</b>
<b>TOTAL CLOSED CASES</b>	<b>189</b>	<b>100.0</b>	<b>9</b>	<b>100.0</b>	<b>198</b>	<b>100.0</b>

**Table 17**

**Types of Requesters Involved in Appeals**

	GENERAL RECORDS		PERSONAL * INFORMATION		TOTAL REQUESTS	
	<u>No.</u>	<u>%</u>	<u>No</u>	<u>%</u>	<u>No.</u>	<u>%</u>
Individual	135	52.1	91	100.0	226	62.5
Researcher	48	18.5	0	0.0	48	13.8
Business	21	8.1	0	0.0	21	6.0
Media	19	7.4	0	0.0	19	5.7
Agent	18	6.9	0	0.0	18	4.3
Other	<u>18</u>	<u>6.9</u>	<u>0</u>	<u>0.0</u>	<u>18</u>	<u>7.7</u>
<b>TOTAL</b>	<u><b>259</b></u>	<u><b>100.0</b></u>	<u><b>91</b></u>	<u><b>100.0</b></u>	<u><b>350</b></u>	<u><b>100.0</b></u>

\* Since the requester in all Personal Information and Correction requests is the individual or an authorized representative, all requesters are treated as individuals.



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## D. Compliance With the Act

### Appeals

Section 58(2)(b) of the *Act* requires the Commissioner to assess the extent to which institutions are complying with the *Freedom of Information and Protection of Privacy Act, 1987*.

Owing to a lapse of approximately two years between the time Bill 34 was introduced in the Legislature and passed into law, government ministries and agencies were able to prepare for the eventual implementation of the new *Act*. The Management Board of Cabinet's Freedom of Information and Privacy Branch was responsible for training Information and Privacy Co-ordinators throughout the government, and for generally ensuring that the *Act* was operational and requests could be processed without delay when the *Act* came into force on January 1, 1988.

The Commissioner's Office, on the other hand, did not have as much lead time, and was without offices and staff until November of 1987. In developing policies and procedures to deal with the appeal process, it became evident that the smooth handling of appeals was dependent, to a large extent, on co-operation between the Commissioner's Office and the various ministries and agencies covered by the *Act*. One of the major areas of interaction between the various institutions and the Commissioner's Office is mediation.

In order for mediation to be effective, the Commissioner's Office must have complete access to all relevant records under appeal. Institutions must also adopt both a flexible attitude toward the mediation process itself, and internal procedures which facilitate, rather than delay, the resolution of appeals. For the most part, Information and Privacy Co-ordinators, Deputy Ministers and other staff of the various institutions have recognized the need for an effective appeal process and have approached the first year of operation with a spirit of co-operation.

### Privacy Protection

During the first year, the Commissioner's Office dealt with a number of issues related to the protection of personal privacy.

With the passage of the *Act*, a number of individuals availed themselves of their new rights regarding the adequate protection of government-held personal information. Complaints were filed with the Commissioner's Office, resulting in investigations of various practices followed by institutions.

In some instances the results of investigations determined that record-keeping practices were authorized by statute. For example:

- the requirement that the date of birth be collected on forms relating to the purchase or sale of real estate;
- the authorization for the Ministry of Community and Social Services to transfer personal information regarding benefit recipients to municipalities;
- the right to print personal information on municipal enumeration notices.

In another instance, investigation confirmed that the government payroll system uses employees' dates of birth and Social Insurance Numbers on attendance reports. The Ministry of Government Services agreed to stop using employees' birth dates and to investigate the possibility of eliminating the use of the SIN. In any event, the Ministry will be asked to distribute attendance reports in envelopes to prevent undue public exposure of any personal information.

A more detailed investigation was conducted in response to complaints received from applicants for Workers' Compensation benefits, who felt that their prior consent should be required before the Workers' Compensation Board (WCB) provided employers with access to employee medical records. Our investigation determined that section 77 of the *Workers' Compensation Act* authorizes the disclosure of this type of personal information to the employer if there is an issue in dispute before the Board. In order to address this seeming inconsistency with the principles of the *Freedom of Information and*

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*Protection of Privacy Act, 1987*, the WCB, in consultation with the Commissioner's Office designed a new notice procedure whereby individuals would be advised whenever access was provided to employers under section 77. The Board also subsequently developed and issued revised policy guidelines and an accompanying manual to assist Board staff in implementing this new policy.

In February of 1988 an incident occurred which raised potentially serious privacy concerns. Files containing telexes and other information were discovered in a public hallway at Queen's Park. These documents contained confidential information relating to child abuse cases which had been provided to the Ministry of Community and Social Services by the British Columbia provincial government. The Ontario Provincial Police, and the Ministries of Community and Social Services and Government Services (which is responsible for electronic mail handling) all conducted investigations. The OPP found there was no criminal offense committed, but the Ministry of Government Services determined that their internal procedures were not adequate to meet the standards of protection required by the *Freedom of Information and Protection of Privacy Act, 1987*. The Commissioner's Office reviewed these three reports and concluded that the incident was caused by: (1) inadequate security provisions; (2) insufficient storage space, leading to the improper use of public areas for storage purposes; and (3) poor retention and disposal schedules. The Commissioner's Office consulted with the Ministry of Government Services on the design and implementation of procedures and security measures required to prevent future problems of this nature. The Commissioner commended the Ministry for its prompt response, and also welcomed the issuance of Ontario Regulation 15/89 by Management Board of Cabinet which deals with the disposal of personal information.

## E. Commissioner's Recommendations

During the *Act's* first year of operation, institutions were required to spend considerable time developing practices and procedures to effectively respond to the new rights provided to the public under the legislation. The Commissioner's Office will continue to monitor these practices, and will consult with individual institutions whenever particular procedures conflict with the principles of the *Act*.

Over the past year, the Commissioner has issued a number of orders which include recommendations directed at specific practices or procedures employed by particular institutions. These recommendations have been made in an effort to provide individual institutions with direction in dealing with certain types of requests, and, more generally, to encourage institutions to adopt uniform approaches to various provisions of the *Act*. Some of the more significant recommendations are summarized below.

Section 57 of the *Act* permits an institution to charge fees for certain activities related to locating and providing access to requested records. The *Act* also permits the government to set the rates for these fees by regulation. Ontario Regulation 532/87 allows an institution to charge \$0.20 for each page of photocopying required to produce a record. In the Commissioner's view, this charge must be interpreted by institutions as a maximum limit. If the government's intention is not to use fees as an additional source of revenue, then institutions should take care to restrict photocopying charges to their actual costs of reproduction.

A related issue is the question of a threshold fee. In the Commissioner's view the threshold level should not be arbitrarily set. Rather, the institution should determine the point at which the administrative costs of collecting fees exceeds the amount of the fees claimed and that figure should be used as a threshold or minimum fee for all institutions.

In another order dealing with fees, the Commissioner emphasized that the *Act* provides a head with discretion to charge a fee or not, and whenever a fee is contemplated, one of the questions a head should ask is: are these costs legitimate and ones which the requester should bear?

The Commissioner also expressed the view that the provisions of the *Act* and regulations relating to fees should be construed to mean that only appropriate and necessary costs should be included in the final charge. The authority to charge a fee should not be viewed by institutions as an opportunity to charge for every conceivable activity undertaken by an institution to prepare the record for disclosure.

When requesters make broadly-worded requests for records, the Commissioner recommended that the institution not unilaterally determine what records the re-

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quester wants. The institution has an obligation to discuss an ambiguous or broadly-worded request for records with individual requesters to more precisely determine the scope of the request.

In situations where an institution has agreed to allow an individual access to his or her own personal information, in the Commissioner's view, the institution is responsible for verifying the identity of the individual. If the individual personally attends at the institution, there are usually straightforward ways of providing verification. However, the situation is more difficult if an individual cannot or does not want to pick up the information in person, and insists on receiving the personal information by mail or other means. The Commissioner believes that institutions should adopt a flexible approach to such demands, while at the same time taking all reasonable steps to verify the identity of the requester. To ensure that individuals recognize the inherent risks in sending personal information by mail, the Commissioner recommended that the personal information request form (issued by Management Board of Cabinet) be amended to include a section that permits a requester to choose one of the following methods of access, listed in descending order of security protection:

- examination on site, or receive a copy;
- receiving a copy by delivery that requires signature on receipt;
- receiving copy by ordinary mail; or
- by other arrangements with the institution.

If a requester is denied access to a record or to his or her own personal information, sections 28 and 48 of the *Act* require the institution to notify the requester of the head's decision. The Commissioner commented in one order that institutions should not take a narrow interpretation of the notice requirements. The institution has an obligation to fully apprise the requester of the details of the institution's reasons for dealing with the record in a certain manner.

A number of the Commissioner's orders dealt with issues relating to the government's records management policies and practices. In order to effectively manage the massive volumes of records held by various government institutions, it is vital that proper records management

policies relating to retention and disposal practices be adopted and applied on a consistent basis by all institutions. Institutions must also ensure that these policies are clearly understood by all relevant personnel.

In one appeal dealing with personal information banks, the Commissioner advised the institution to develop clearly-stated guidelines regarding records retention schedules, particularly where the institution adopts practices that go beyond the minimum requirements established by regulation.

In another order, the Commissioner emphasized that good record keeping practices are an essential element in the effective implementation of the *Act*. This observation was prompted by a situation where a requested record was "lost" by the institution, though clear evidence indicated that the record should exist. The Commissioner indicated that he intends to work closely with institutions to determine ways of improving records management systems throughout the government.

In order to provide access to general records or personal information, the *Act* provides that an institution must have "custody or control" of the record. In some circumstances, records are created for an institution by a third party, and there have been instances where inadequate procedures have resulted in institutions losing custody or control of these types of records. In one case, the Commissioner recommended that institutions develop clear policies which ensure that records created by third parties are not "lost", thereby, in effect, denying the requester the right of access.

The preceding recommendations, and others contained in various orders of the Commissioner, require institutions to set a high standard of service to the public in addressing the requirements of the *Act*. To meet this standard, it is necessary for institutions to devote time, energy and resources. The goals and objectives of the *Freedom of Information and Protection of Privacy Act* can only be achieved if adequate financial and human resource commitments are made, particularly as they relate to the work of Information and Privacy Co-ordinators, whose dedicated efforts are integral to the overall success of the *Act*.



## SECTION 59: OTHER ACTIVITIES

Subsection 59(a) of the *Act* gives the Commissioner authority to comment on the privacy protection implications of proposed legislative schemes or government programs.

During the course of 1988, the Commissioner's Office provided comment on Bill 147, the *Independent Health Facilities Act*, as well as proposed amendments to the *Childrens' Services Act* dealing with information collected and disclosed by Childrens' Aid Societies. The Commissioner is also monitoring the preparation and consultations initiated by the Ministry of Health in developing its omnibus health-care information legislation.

The Commissioner is also authorized, under subsection 59(c) of the *Act*, to permit the collection of personal information otherwise than directly from the individual. The Ministry of Community and Social Services asked for and received permission to collect personal information indirectly from municipalities in one specific instance. The Ministry had provided municipalities with funding for a particular project, and required the local bodies to collect information for program evaluation purposes. In order to complete its own evaluation of the project, the Ministry sought access to the information collected by the municipalities. The Commissioner thought the request was reasonable in these circumstances, and authorized indirect collection.

Another request for indirect collection was initiated by the Ministry of Treasury and Economics, dealing with a data-matching project involving federal income tax data. Consideration of this request is ongoing, pending receipt of written submissions from the Ministry.

An independent public opinion poll conducted in March of 1987 found that the majority of Ontario residents (71%) were concerned about the confidentiality of personal information collected by the provincial government. The public's concern was stronger regarding government-held information than for personal information collected by other organizations such as banks and insurance companies. One of the major factors contributing to this concern was the use of computer technology. The majority of respondents (77%) believed

that "as long as information is stored on computers, we can never be sure of our guarantee of privacy". Technological advancement, particularly as it relates to the collection and use of personal information, will be of increasing importance and interest to the Commissioner's Office in the months and years ahead.

Section 59(e) of the *Act* gives the Commissioner authority to conduct public education programs concerning the *Act* and the work of the Commissioner's Office. In order to assess the public's awareness of the *Act* and design an outreach and education program, the agency commissioned a survey in January of 1988. The results indicate that the vast majority (83%) of those surveyed thought that the *Act* was a good idea. Ninety-four percent of respondents indicated that their individual privacy and the protection of their personal information held by the government was important; 73% felt that it was very important. Three-quarters of those surveyed felt that the protection of individual privacy was more important than having the right to access government information. This may partially explain why 7 out of 10 people believe that the government had a right, or in some cases an obligation, to keep certain kinds of information confidential. Seventy-eight percent of respondents also thought that extending the legislation to cover municipalities was a good idea.

A number of outreach projects have been undertaken during the past year.

- 1) A brochure was printed and widely distributed throughout Ontario, outlining the *Act* and the role of the Commissioner as the appeal body.
- 2) A quarterly "Newsletter" is published, as well as "Summaries of Appeals" which are issued every six weeks. The former provides general information on the work of the Office, while the latter summarizes the Commissioner's Orders and selected settled cases.
- 3) A 15-minute videotape has been produced, which describes the *Act* and the role of the Commissioner. The videotape is available for presentations by staff, and for viewing by interested organizations.

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- 4) The Proceedings of the Conference on Freedom of Information and Protection of Privacy in Ontario, sponsored by Management Board of Cabinet on November 22-23, 1988, have been printed and are available for purchase through Publications Ontario.

The Commissioner and staff members have spoken to various groups over the past year, including:

Ontario Psychological Association  
Ontario Securities Commission  
Colleges of Applied Arts and Technology  
Rent Review Hearings Board  
C.B.A.O.- Labour Law Sub-section  
C.B.A.O.- Administrative Law Section  
C.B.A.O.- Research and Policy Analysis Section  
C.B.A.O.- Young Lawyers' Division  
Ryerson School of Journalism  
Canadian Information Processing Society  
CIPS, Security Interest Group  
City of Toronto  
Ontario Systems Council  
Personnel Association of Ontario  
American Society of Access Professionals  
Database Association (Ontario)  
The Council of Information and Referral Services  
Pay Equity Commission  
Association of Records Managers and Administrators  
Queen's Park Press Gallery  
Toronto Association of Law Libraries  
Canadian Public Personnel Management Association  
Association of Clerks-Treasurers of Hastings County  
Regional Municipality of Ottawa-Carleton  
City of Ottawa  
Town of Gloucester  
Loyalist College

## Telephone Tracking

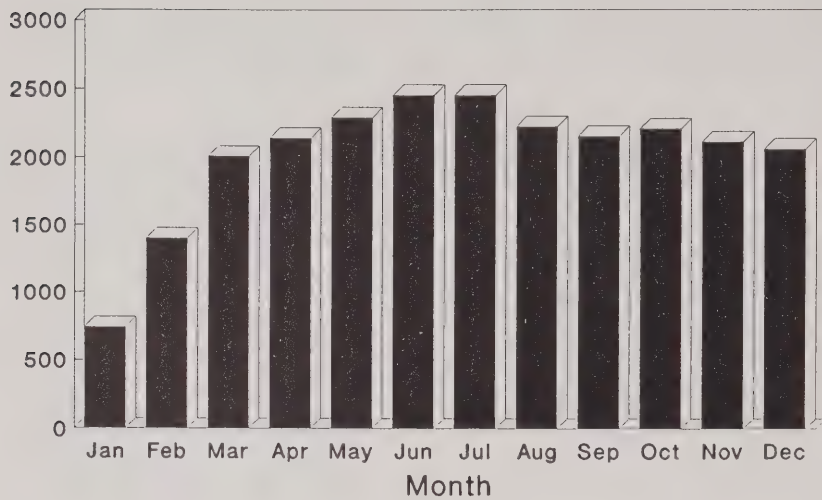
The agency has established a toll-free telephone number which members of the public can call to obtain information regarding the operation of the Act and the work of the Commissioner's Office.

During 1988 a total of 24,283 telephone calls were received by the Commissioner's Office. As might be expected, the number of calls increased dramatically during the first 4 months of operation before leveling off over the summer months to approximately 2,000 calls per month.

Of these calls, a total of 1,111 were categorized as general information calls requiring the assistance of an Information Officer. The majority of these inquiries were from individuals (69%), followed by calls from within government (11%), business (9%), the media (3%), organizations (3%) and other callers (2%). The pattern for these information calls during 1988 is reflected in Figure 2.



Figure 2  
Monthly Telephone Tracking  
1988 Calls through Switchboard (24,283)



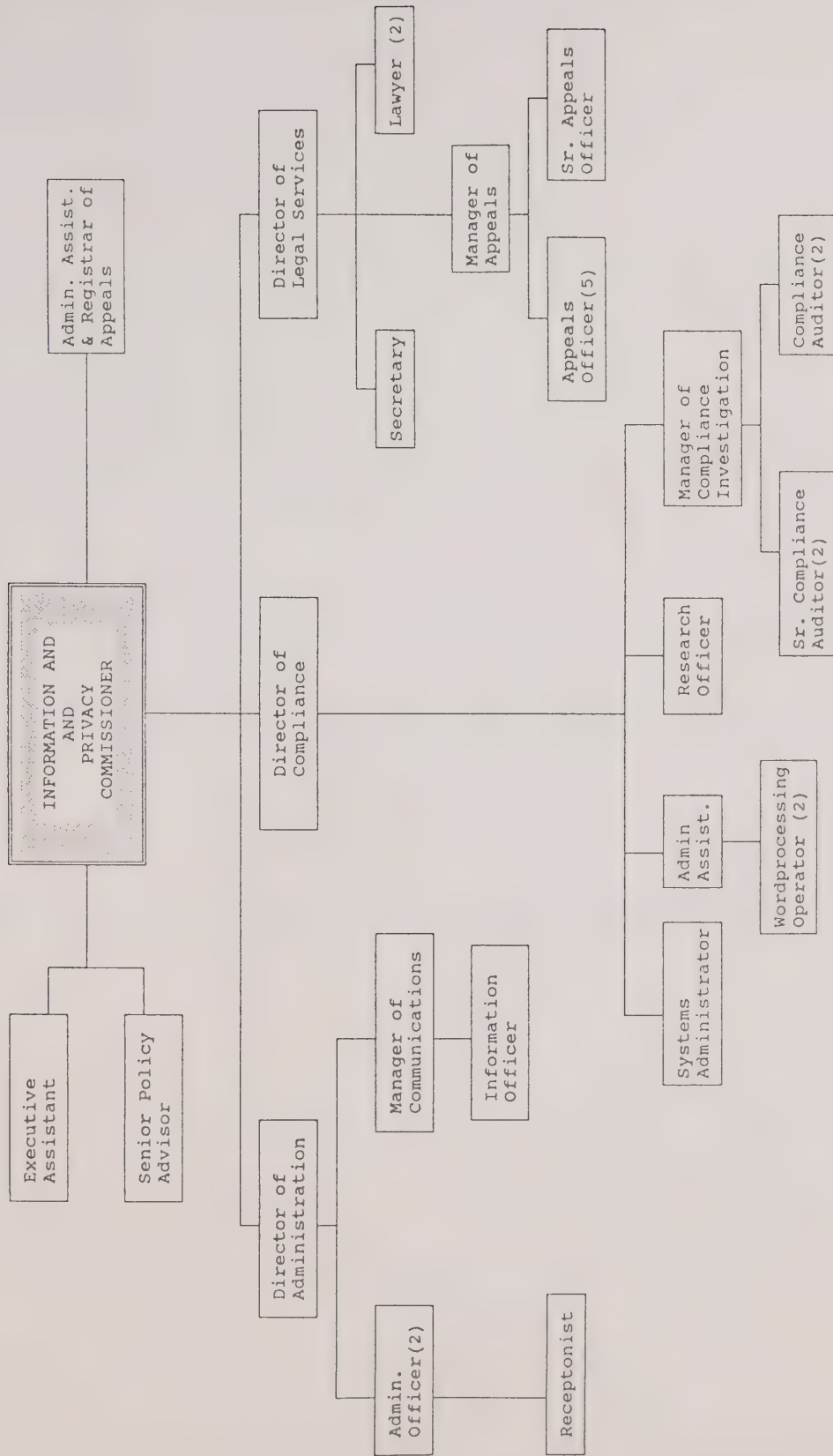
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*Appendix A*

**Organization Chart**

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*Appendix B*

**Financial Statements 1987 -88**

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OFFICE OF THE PROVINCIAL AUDITOR

Box 105, 15th Floor, 20 Dundas St. West  
Toronto, Ontario M5G 2C2  
(416) 974-9866

To the Information and Privacy Commissioner  
and to the Speaker of the Assembly.

I have examined the statement of expenditure of the Office of the Information and Privacy Commissioner for the eight month period ended March 31, 1988. My examination was made in accordance with generally accepted auditing standards, and accordingly included such tests and other procedures as I considered necessary in the circumstances.

In my opinion, this financial statement presents fairly the expenditure of the Office of the Information and Privacy Commissioner for the eight month period ended March 31, 1988 in accordance with the accounting policies described in note 2 to the financial statement.

Toronto, Ontario,  
July 28, 1988.

A handwritten signature in cursive script, reading "J.F. Otterman".

J.F. Otterman, F.C.A.,  
Assistant Provincial Auditor.



OFFICE OF THE INFORMATION AND  
PRIVACY COMMISSIONER

Financial Statement  
for the eight month period ended  
March 31, 1988





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OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

Statement of Expenditure  
for the eight month period ended March 31, 1988  
(note 4)

	1988 \$
Salaries and wages	202,346
Employee benefits (note 5)	18,867
Transportation and communication	11,144
Services	197,789
Supplies and equipment	<u>166,001</u>
	<u>596,147</u>

See accompanying notes to financial statement.

Approved :



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Information and Privacy Commissioner



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## OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

### Notes to Financial Statement March 31, 1988

#### 1. GENERAL

The Information and Privacy Commissioner is responsible for ensuring that Ontario government institutions comply with the Freedom of Information and Protection of Privacy Act, 1987 and apply the standards of privacy protection set out in the Act. As Commissioner, he may review decisions made by government institutions where access to information has been denied to a member of the public. Upon investigating the circumstances of the appeal, he has the final authority to deny or to order the disclosure of the requested information.

#### 2. SIGNIFICANT ACCOUNTING POLICIES

##### (a) Basis of accounting

The Office uses a cash basis of accounting modified to allow an additional 22 days to pay for debts incurred during the period just ended.

##### (b) Fixed assets

Expenditures on fixed assets are expensed in the year of acquisition.

#### 3. REPORTING PERIOD

This financial statement covers the Office's first period of operations from August 4, 1987 to March 31, 1988.

#### 4. EXPENDITURE

Expenses are paid out of moneys appropriated therefor by the Legislature of the Province of Ontario.

#### 5. PENSION PLAN

The Office of the Information and Privacy Commissioner provides pension benefits for substantially all its permanent employees through participation in the Public Service Superannuation Fund and Superannuation Adjustment Fund established by the Province of Ontario. The Office's share of contributions to these Funds during the period was \$5,200. This amount represents the total obligation of the Office of the Information and Privacy Commissioner and is included in employee benefits.





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*Appendix C*

**Financial Statements 1988-89**

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Ontario

## OFFICE OF THE PROVINCIAL AUDITOR

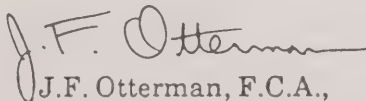
Box 105, 15th Floor, 20 Dundas St. West  
Toronto, Ontario M5G 2C2  
(416) 974-9866

To the Information and Privacy Commissioner  
and to the Speaker of the Assembly.

I have examined the statement of expenditure of the Office of the Information and Privacy Commissioner for the year ended March 31, 1989. My examination was made in accordance with generally accepted auditing standards, and accordingly included such tests and other procedures as I considered necessary in the circumstances.

In my opinion, this financial statement presents fairly the expenditure of the Office of the Information and Privacy Commissioner for the year ended March 31, 1989 in accordance with the accounting policies described in note 2 to the financial statement applied on a basis consistent with that of the preceding eight month period.

Toronto, Ontario,  
June 6, 1989

  
J.F. Otterman, F.C.A.,  
Assistant Provincial Auditor.



OFFICE OF THE INFORMATION AND  
PRIVACY COMMISSIONER

Financial Statement  
for the year ended March 31, 1989





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OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

Statement of Expenditure  
for the year ended March 31, 1989  
(Note 4)

	1989 \$	1988 \$ (Note 3)
Salaries and wages	1,331,701	202,346
Employee benefits (note 5)	154,496	18,867
Transportation and communication	64,599	11,144
Services	453,121	197,789
Supplies and equipment	<u>398,282</u>	<u>166,001</u>
	<u>2,402,199</u>	<u>596,147</u>

See accompanying notes to financial statement.

Approved :

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Commissioner

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General Manager

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Information and Privacy Commissioner



# OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

## Notes to Financial Statement March 31, 1989

### 1. GENERAL

The Information and Privacy Commissioner is responsible for ensuring that Ontario government institutions comply with the Freedom of Information and Protection of Privacy Act, 1987 and apply the standards of privacy protection set out in the Act. As Commissioner, he may review decisions made by government institutions where access to information has been denied to a member of the public. Upon investigating the circumstances of the appeal, he has the final authority to deny or to order the disclosure of the requested information.

### 2. SIGNIFICANT ACCOUNTING POLICIES

#### (a) Basis of accounting

The Office uses a cash basis of accounting modified to allow an additional 22 days to pay for debts incurred during the period just ended.

#### (b) Fixed assets

Expenditures on fixed assets are expensed in the year of acquisition.

### 3. COMPARATIVE FIGURES

The comparative figures cover the Office's first period of operations from August 4, 1987 to March 31, 1988.

### 4. EXPENDITURE

Expenses are paid out of moneys appropriated therefor by the Legislature of the Province of Ontario.

### 5. PENSION PLAN

The Office of the Information and Privacy Commissioner provides pension benefits for substantially all its permanent employees through participation in the Public Service Superannuation Fund and Superannuation Adjustment Fund established by the Province of Ontario. Pension benefits for the Information and Privacy Commissioner are provided through the Legislative Assembly Retirement Allowance Account. The Office's share of contributions to these Funds and Account during the period was \$79,100. This amount represents the total obligation of the Office of the Information and Privacy Commissioner and is included in employee benefits.





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*Appendix D*

**Year-End Statistical Report**

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# STATISTICAL REPORT FOR THE INFORMATION AND PRIVACY COMMISSIONER/ONTARIO

## SECTION 1

INSTITUTION: \_\_\_\_\_

Please indicate whether your institution is a  
Ministry or an Agency:

[ ] Ministry  
[ ] Agency

Total Number of employees in Ministry or  
Agency: \_\_\_\_\_

Did your Institution receive at least one  
request for access to information (general  
records or personal information) or process  
any appeals?

[ ] NO (Skip to section 16)  
[ ] YES (Continue)

## SECTION 2

Number of Requests and Transfers

	GENERAL		PERSONAL		TOTAL	
	<u>RECORDS</u>		<u>INFORMATION</u>		<u>TOTAL</u>	
	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>
Requests completed in 1988	___	_____	___	_____	___	_____
Requests carried over to 1989	___	_____	___	_____	___	_____
Total requests received in 1988	___	100.0	___	100.0	___	100.0
Number of requests transferred to other institutions:	___		___		___	
TOTAL REQUEST SUBMISSIONS:	___		___		___	
Number of requests returned due to insufficient detail:	___		___		___	

THE REMAINING STATISTICS ARE BASED ON CASES COMPLETED IN 1988:

### SECTION 3

#### Source of Request

	GENERAL		PERSONAL		TOTAL	
	<u>RECORDS</u>		<u>INFORMATION</u>			
	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>
Media	—	—	—	—	—	—
Researcher	—	—	—	—	—	—
Business	—	—	—	—	—	—
Association	—	—	—	—	—	—
Individual	—	—	—	—	—	—
Other	—	—	—	—	—	—
Unknown	—	—	—	—	—	—
Total	—	100.0	—	100.0	—	100.0

### SECTION 4

#### Number of Extentions Required

	GENERAL		PERSONAL		TOTAL	
	<u>RECORDS</u>		<u>INFORMATION</u>			
	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>
Due to numerous records	—	—	—	—	—	—
Due to Consultations	—	—	—	—	—	—
Due to both of the above	—	—	—	—	—	—
Total extentions	—	100.0	—	100.0	—	100.0
Total extentions as percent of closed cases	_____ %		_____ %		_____ %	

## SECTION 5

### Length of Time to Completion

	GENERAL		PERSONAL		TOTAL	
	<u>RECORDS</u>		<u>INFORMATION</u>			
	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>
30 days or less	_____	_____	_____	_____	_____	_____
31 - 60 days	_____	_____	_____	_____	_____	_____
61 - 90 days	_____	_____	_____	_____	_____	_____
91 - 120 days	_____	_____	_____	_____	_____	_____
121 - 150 day	_____	_____	_____	_____	_____	_____
151 days or more	_____	_____	_____	_____	_____	_____
Total	_____	100.0	_____	100.0	_____	100.0
-						
X number of days to completion	_____		_____		_____	

## SECTION 6

### Continuing Access Requests

	GENERAL		PERSONAL		TOTAL	
	<u>RECORDS</u>		<u>INFORMATION</u>			
	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>
No. of completed requests that were continuing access	_____	100.0	N/A	N/A	_____	100.0

## SECTION 7

### Disposition of Requests

	GENERAL		PERSONAL		TOTAL	
	<u>RECORDS</u>		<u>INFORMATION</u>			
	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>
All information disclosed	_____	_____	_____	_____	_____	_____
Disclosed in part - exempt	_____	_____	_____	_____	_____	_____
- non-existent	_____	_____	_____	_____	_____	_____
Nothing Disclosed - exempt	_____	_____	_____	_____	_____	_____
No Record Exists	_____	_____	_____	_____	_____	_____
Refused to confirm/deny - exempt	_____	_____	_____	_____	_____	_____
- non-existent	_____	_____	_____	_____	_____	_____
Withdrawn	_____	_____	_____	_____	_____	_____
Abandoned	_____	_____	_____	_____	_____	_____
Total	_____	100.0	_____	100.0	_____	100.0



SECTION 8

Exemptions Invoked:

A) General Records

___ S.12(1)	___ S.14(1) (k)	___ S.17(1) (b)	___ S.21(5)
___ S.13(1)	___ S.14(1) (l)	___ S.17(1) (c)	___ S.22(a)
___ S.14(1) (a)	___ S.14(2) (a)	___ S.18(1) (a)	___ S.22(b)
___ S.14(1) (b)	___ S.14(2) (b)	___ S.18(1) (b)	___ S.49(a)
___ S.14(1) (c)	___ S.14(2) (c)	___ S.18(1) (c)	___ S.49(b)
___ S.14(1) (d)	___ S.14(2) (d)	___ S.18(1) (d)	___ S.49(c)
___ S.14(1) (e)	___ S.14(3)	___ S.18(1) (e)	___ S.49(d)
___ S.14(1) (f)	___ S.15(1) (a)	___ S.18(1) (f)	___ S.49(e)
___ S.14(1) (g)	___ S.15(1) (b)	___ S.18(1) (g)	___ S.49(f)
___ S.14(1) (h)	___ S.15(1) (c)	___ S.19	___ S.67(2)
___ S.14(1) (i)	___ S.16	___ S.20	
___ S.14(1) (j)	___ S.17(1) (a)	___ S.21(1)	

\_\_\_ X number of exemptions invoked per denial request

B) Personal Information

___ S.12(1)	___ S.14(1) (k)	___ S.17(1) (b)	___ S.20
___ S.13(1)	___ S.14(1) (l)	___ S.17(1) (c)	___ S.22(a)
___ S.14(1) (a)	___ S.14(2) (a)	___ S.18(1) (a)	___ S.22(b)
___ S.14(1) (b)	___ S.14(2) (b)	___ S.18(1) (b)	___ S.49(b)
___ S.14(1) (c)	___ S.14(2) (c)	___ S.18(1) (c)	___ S.49(c)
___ S.14(1) (d)	___ S.14(2) (d)	___ S.18(1) (d)	___ S.49(d)
___ S.14(1) (e)	___ S.14(3)	___ S.18(1) (e)	___ S.49(e)
___ S.14(1) (f)	___ S.15(1) (a)	___ S.18(1) (f)	___ S.49(f)
___ S.14(1) (g)	___ S.15(1) (b)	___ S.18(1) (g)	___ S.67(2)
___ S.14(1) (h)	___ S.15(1) (c)	___ S.18(2) (a)	
___ S.14(1) (i)	___ S.16	___ S.18(2) (b)	
___ S.14(1) (j)	___ S.17(1) (a)	___ S.19	

\_\_\_ X number of exemptions invoked per denial request

C) Totals

___ S.12(1)	___ S.14(1) (k)	___ S.17(1) (b)	___ S.20
___ S.13(1)	___ S.14(1) (l)	___ S.17(1) (c)	___ S.21(1)
___ S.14(1) (a)	___ S.14(2) (a)	___ S.18(1) (a)	___ S.21(5)
___ S.14(1) (b)	___ S.14(2) (b)	___ S.18(1) (b)	___ S.22(a)
___ S.14(1) (c)	___ S.14(2) (c)	___ S.18(1) (c)	___ S.22(b)
___ S.14(1) (d)	___ S.14(2) (d)	___ S.18(1) (d)	___ S.49(a)
___ S.14(1) (e)	___ S.14(3)	___ S.18(1) (e)	___ S.49(b)
___ S.14(1) (f)	___ S.15(1) (a)	___ S.18(1) (f)	___ S.49(c)
___ S.14(1) (g)	___ S.15(1) (b)	___ S.18(1) (g)	___ S.49(d)
___ S.14(1) (h)	___ S.15(1) (c)	___ S.18(2) (a)	___ S.49(e)
___ S.14(1) (i)	___ S.16	___ S.18(2) (b)	___ S.49(f)
___ S.14(1) (j)	___ S.17(1) (a)	___ S.19	___ S.67(2)

\_\_\_ X number of exemptions invoked per denial request

	<u>GENERAL</u> <u>RECORDS</u>	<u>PERSONAL</u> <u>INFORMATION</u>	<u>TOTAL</u>
___ X no. of exemptions/request involving denials	___	___	___

SECTION 9

Notices to Affected Parties

	GENERAL		PERSONAL		TOTAL	
	<u>RECORDS</u>		<u>INFORMATION</u>		<u>TOTAL</u>	
	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>
Number of notices due to S.17(1)	—	—	—	—	—	—
Number of notices due to S.21(1) (f)	—	—	—	—	—	—
Total notices sent	—	100.0	—	100.0	—	100.0
Total requests involving notices	—	—	—	—	—	—
X number of notices/request involving notices	—	—	—	—	—	—

SECTION 10

Method of Access Requested

	GENERAL		PERSONAL		TOTAL	
	<u>RECORDS</u>		<u>INFORMATION</u>		<u>TOTAL</u>	
	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>
Copies requested	—	—	—	—	—	—
Examination of original requested	—	—	—	—	—	—
Copies and examination requested	—	—	—	—	—	—
No preference given	—	—	—	—	—	—
Total	—	100.0	—	100.0	—	100.0

Method of Access Granted

	GENERAL		PERSONAL		TOTAL	
	<u>RECORDS</u>		<u>INFORMATION</u>		<u>TOTAL</u>	
	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>
Copies granted	—	—	—	—	—	—
Examination of original granted	—	—	—	—	—	—
Copies and examination granted	—	—	—	—	—	—
Total	—	100.0	—	100.0	—	100.0

## SECTION 11

### Fees

	GENERAL		PERSONAL		TOTAL	
	<u>RECORDS</u>		<u>INFORMATION</u>		<u>TOTAL</u>	
	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>
Cases where fees estimated	_____	_____	_____	_____	_____	_____
Cases where fees collected	_____	_____	_____	_____	_____	_____
Cases where fees waived- in whole	_____	_____	_____	_____	_____	_____
- in part	_____	_____	_____	_____	_____	_____
 Total fees estimated	\$ _____		\$ _____		\$ _____	
Total fees collected	\$ _____		\$ _____		\$ _____	
Total fees waived	\$ _____		\$ _____		\$ _____	
 Avg. fee estimated/estimated case	\$ _____		\$ _____		\$ _____	
Avg. fee collected/collected case	\$ _____		\$ _____		\$ _____	
Avg. fee waived/waived case (whole or part)	\$ _____		\$ _____		\$ _____	

## SECTION 12

### Reasons for Collection of Fees

	GENERAL		PERSONAL		TOTAL	
	<u>RECORDS</u>		<u>INFORMATION</u>		<u>TOTAL</u>	
	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>
Search Time (in excess of 2 hours)	_____	_____	_____	_____	_____	_____
Reproduction	_____	_____	_____	_____	_____	_____
Preparation	_____	_____	_____	_____	_____	_____
Shipping	_____	_____	_____	_____	_____	_____
Computer Costs	_____	_____	_____	_____	_____	_____
Other (including other invoiced costs)	_____	_____	_____	_____	_____	_____
 Total	_____	100.0	_____	100.0	_____	100.0

SECTION 13

CORRECTION REQUESTS

	<u>No.</u>	<u>%</u>
Requests completed in 1988	_____	_____
Requests carried over to 1989	_____	_____
 TOTAL requests received in 1988	 _____	 100.0
 - X number of days to completion	 _____	

SECTION 14

Dispositions (Completed Corrections Only)

	<u>No.</u>	<u>%</u>
Correction(s) made in whole	_____	_____
Correction(s) made in part	_____	_____
Correction(s) refused	_____	_____
Correction(s) Withdrawn	_____	_____
 Total	 _____	 100.0

Number of Statements of Disagreement Attached: \_\_\_\_\_

Notification of Correction or Statement of Disagreement requested: \_\_\_\_\_

Number of Notifications Sent: \_\_\_\_\_

Please describe how you determined what persons to send notifications to.

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SECTION 15

PERSONAL INFORMATION BANKS

Total Number of Personal Information  
Banks Accessed (Closed P.I. Requests): \_\_\_\_\_  
-  
X number of Personal Information Banks  
Accessed per closed P.I. Request: \_\_\_\_\_  
  
Number of uses not described in directory: \_\_\_\_\_

Please provide a brief description of each instance where a use of personal information was not described in the directory and indicate if, and by what method, a link was attached. (Please use an additional page if required.)

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Have any additional personal information banks been identified and added to the directory? If yes, please describe.

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**SECTION 16**

**Form Notifications**

Number of forms in use by institution: \_\_\_\_\_

Number of forms redeveloped to include notification regarding intended use of the information collected, authority for the collection, and individual to contact: \_\_\_\_\_

Number of forms under review regarding notification and other requirements: \_\_\_\_\_

**SECTION 17**

**Other Situations Involving Privacy Matters**

If any other situations arose involving privacy concerns, please describe them below or on an attached sheet if additional space is required.

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**APPEALS**

**SECTION 18**

**Number of Appeals Commenced in 1988**

	<u>GENERAL</u>		<u>PERSONAL</u>		<u>TOTAL</u>	
	<u>RECORDS</u>		<u>INFORMATION</u>			
	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>
1. Refusal of access in whole	___	___	___	___	___	___
2. Refusal of access in part	___	___	___	___	___	___
3. Refuse to confirm or deny	___	___	___	___	___	___
4. Correction(s) refused	___	___	___	___	___	___
5. Time extension	___	___	___	___	___	___
6. Third party information	___	___	___	___	___	___
7. Access method	___	___	___	___	___	___
8. Fees/Fee estimate	___	___	___	___	___	___
9. Record does not exist	___	___	___	___	___	___
10. Other	___	___	___	___	___	___
Total	___	100.0	___	100.0	___	100.0

**SECTION 19**

**Number of Appeals Completed in 1988**

	<u>GENERAL</u>		<u>PERSONAL</u>		<u>TOTAL</u>	
	<u>RECORDS</u>		<u>INFORMATION</u>			
	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>
1. Refusal of access in whole	___	___	___	___	___	___
2. Refusal of access in part	___	___	___	___	___	___
3. Refuse to confirm or deny	___	___	___	___	___	___
4. Correction(s) refused	___	___	___	___	___	___
5. Time extension	___	___	___	___	___	___
6. Third party information	___	___	___	___	___	___
7. Access method	___	___	___	___	___	___
8. Fees/Fee estimate	___	___	___	___	___	___
9. Record does not exist	___	___	___	___	___	___
10. Other	___	___	___	___	___	___
Total	___	100.0	___	100.0	___	100.0

Total Number of completed Appeals

as a percent of completed cases

\_\_\_%

\_\_\_%

\_\_\_%

SECTION 20

Disposition of Completed Appeals

	GENERAL		PERSONAL			
	<u>RECORDS</u>		<u>INFORMATION</u>		<u>TOTAL</u>	
	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>
1. Non Jurisdictional	---	---	---	---	---	---
2. Settled at Mediation	---	---	---	---	---	---
3. Withdrawn at Mediation	---	---	---	---	---	---
4. Abandoned at Mediation	---	---	---	---	---	---
5. Dismissed at Inquiry	---	---	---	---	---	---
6. Allowed at Inquiry	---	---	---	---	---	---
7. Partially Allowed at Inquiry	---	---	---	---	---	---
8. Withdrawn at Inquiry	---	---	---	---	---	---
9. Settled at Inquiry	---	---	---	---	---	---
10. Other	---	---	---	---	---	---
Total	---	100.0	---	100.0	---	100.0



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*Appendix E*

**Summaries of Orders  
and  
Selected Summaries of Settled Cases**

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# SUMMARIES OF APPEALS

## Order No. 1 Appeal No. 880070 (May 9, 1988)

The appellant applied to the Ministry of Government Services requesting a copy of "The Metro Toronto Property Review", a study by Eli Comay of Comay Planning Consultants. Access was denied pursuant to subsection 22(b) of the *Freedom of Information and Protection of Privacy Act* on the basis that there were reasonable grounds to believe the report would be published and publicly available within ninety (90) days from the date of the request. The appellant appealed the denial of earlier access.

The Commissioner upheld the decision of the head. In coming to this conclusion, he noted the purpose of the *Act* in subsection 1(a) is "to provide a right of access to information under the control of institutions in accordance with the principles that information should be available to the public, that necessary exemptions from the rights of access should be limited and specific....". The Commissioner also noted that "...the burden of proof that the record or the part falls within one of the specified exemptions in this *Act* lies upon the head." (s. 53)

The appellant submitted in the grounds of appeal that early release of the report would benefit the public debate over the government's housing policy plans. The appellant cited section 23 of the *Act* which provides that exemptions under sections 13, 15, 17, 18, 20 and 21 do not apply where a "compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption." Subsection 22(b) is not one of the exemptions set out in section 23.

Submissions received from the head confirmed that "the information requested will be available" prior to the end of the ninety (90) day period provided for in subsection 22(b) of the *Act*. The submissions also indicated that it was the "intention to release the report to all interested parties on an equal basis, at cost."

The report was released by the Ministry on May 31, 1988, two days in advance of the expiry of the 90-day period.

## Order No. 2 Appeal No. 880003 (June 9, 1988)

The appellant applied to Ontario Hydro requesting access to the Board of Directors' minutes for 1986 and 1987. The institution provided the appellant with a fee estimate of \$120.00 for the requested records. The fees notification also explained that providing access to original records "was not reasonable in the circumstances, as the records required severing and original Board Minutes cannot leave Head Office". The appellant appealed the decision to charge a fee and the amount of the fee, as well as the decision not to make the record available for examination in Ottawa.

The appellant also applied for a waiver of fees based on subsection 57(3)(c) of the *Freedom of Information and Protection of Privacy Act*. The institution denied the appellant's request for a waiver of fees.

The Commissioner upheld the decision of the head not to allow the appel-

lant to examine the record or parts thereof under subsection 30(2) of the *Act*. In coming to this conclusion, the Commissioner agreed with the head's submission that it was not "reasonably practicable" to permit the appellant to examine the record because it was subject to substantial amounts of severing, pursuant to subsection 10(2) of the *Act*.

Having found it not reasonably practicable in the circumstances of the case to provide an opportunity to examine the record, the Commissioner found it unnecessary to address the issue of where the record might be examined. However, he did not preclude the possibility that, in proper circumstances, arrangements could be made for transfer of a record to make examination by a requester more convenient.

The Commissioner upheld the decision of the head to follow subsection 5(1) of Ontario Regulation 532/87, as amended, to charge \$.20 per page for photocopying of the record.

However, the Commissioner suggested that the fee of \$.20 per page be viewed as a maximum and suggested that the institution make an effort to determine the actual cost of photocopying. He stated the importance of an institution making every effort to prevent fees from being used as a deterrent or impediment to the use of the *Act*.

The appellant claimed that fees should be waived pursuant to subsection 57(3)(c) of the *Act*. While the Commissioner acknowledged that no definition of the term "benefit public health or safety" exists in the *Act*, he asserted that it does not mean that fees will be waived where a record simply contains some information relating to health or safety matters.



While it had no bearing on the determination in this case, the appellant requested that the Commissioner consider the issue of a threshold or minimum fee. Ontario Regulation 532/87, recently amended, allows a head to waive any fee where the amount of payment would be \$5.00 or less.

The Commissioner stated that it is important that all institutions covered by the *Act* apply a consistent set of guidelines which reflect the institution's rationale for charging fees. The Commissioner believes this rationale to be the recovery of some of the costs of the administration of the *Act* and the assurance that people who use the *Act* assume their fair share of costs.

To this end, the institution should determine the point at which the administrative cost of collecting fees exceeds the amount of the fees claimed, and that figure should be used as a threshold or minimum fee for all institutions. While there has not yet been sufficient experience to make this determination, the Commissioner urged the government to undertake this effort. The Commissioner underscored the importance of establishing a fair and consistent fee policy while at the same time guarding against fees being used to deter users of the *Act*.

### **Order No. 3**

### **Appeal No. 880031**

(June 21, 1988)

The appellant applied to the Ministry of Education (the Institution) requesting access to "a study on the Sacred Heart Roman Catholic School in Sioux Lookout" prepared by consulting engineers Keewatin-Aski Limited for

the Dryden District Roman Catholic Separate School Board (the School Board). Access was denied pursuant to subsections 17(1)(c) and 18(1)(d) of the *Freedom of Information and Protection of Privacy Act*. The appellant appealed the denial of access.

During the mediation/investigation stage of the appeal, a narrowing of the issues was achieved. The appellant indicated his interest was confined to information contained in the report about asbestos and fire safety problems present in the school. Consequently, the subject of this appeal was the portion of the report in which these issues were addressed.

As a preliminary matter, the Commissioner found that the report was in the custody or under the control of the Institution. In coming to this conclusion, he noted that the report was submitted by the School Board to the Institution in support of a request for an allocation under the Institution's Capital Grant Plan. In addition, the Institution submitted that "it is unlikely that a request for money for work to be done on a school would be considered without an engineer's report."

The Commissioner ordered the disclosure of the portion of the report addressing asbestos and fire safety, as he found that neither the Institution nor the School Board had discharged the onus of proving that this portion of the report fell within one of the specified exemptions of the *Act*.

#### Subsection 17(1)(c) Exemption

The Commissioner set out the three-fold test which must be met in order for information to fall within the exemption.

1. In finding that the information contained in the report was technical in nature, the Commissioner was satisfied that the portion of the report at issue fit within one of the categories of information set out in subsection 17(1).

2. After examining the circumstances surrounding the creation and use of the report, the Commissioner found that the report was supplied to the Institution in confidence implicitly. The School Board submitted that it received the report at an *in camera* session. The School Board has not released the report to the public. The Institution submitted that since the report was kept in confidence by the School Board and sent as supporting information with respect to the grant program, the Institution felt that it should respect the School Board's wishes and hold the report in confidence.

3. The final question addressed was whether there would be any undue loss or gain suffered by disclosure of the portion of the report requested. The Commissioner came to the conclusion that disclosure could not reasonably be expected to result in undue loss or gain to any person, group, committee or financial institution or agency.

#### Subsection 18(1)(d) Exemption

The Commissioner found that there was insufficient evidence to conclude that disclosure of the portions of the report dealing with asbestos and fire safety could reasonably be expected to be injurious to the financial interest of the Government of Ontario and accordingly ordered the relevant portions of the report be released within 20 days of making the order.

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**Order No. 4**  
**Appeal No. 880009**  
(July 18, 1988)

In accordance with subsection 25(1) of the *Freedom of Information and Protection of Privacy Act, 1987*, a portion of a request made to Management Board of Cabinet was transferred to the Ministry of Education. The request was for correspondence from June 1983 to June 1985 with other Ministries, organizations, associations and religious leaders relating to the decision to extend government funding to separate schools. The appellant was provided with a fee estimate of \$1,682.00 consisting of \$1,152.00 search time, \$480.00 preparation time, \$40.00 reproduction costs, and \$10.00 shipping costs. The requester was asked to make a deposit of \$841.00. The appellant appealed the decision to charge a fee.

The Commissioner found that the language of subsection 57(1) of the *Act*, couched permissively as it is, provides the head with discretion not to charge a fee, without taking into account subsection 57(3). The Commissioner stated that a head must make an initial decision to charge a fee or not charge a fee based on all relevant factors in a particular case, which are not confined to the reasons set out in subsection 57(3) dealing with waiver. The Commissioner suggested that these factors might include such considerations as a pressing need to disseminate a particular piece of information; the administrative cost of collecting the fee compared with the total fee to be collected; the utility of making a particular type of information available given the nature of an individual institution; or the need to facilitate use by those living outside the municipality where the records are located.

Because the head in this case had argued throughout that he did not have the discretion under subsection 57(1) to not charge a fee, the Commissioner ordered that the request be sent back to the head for a decision based upon the exercise of this discretion within 20 days of the date of this Order.

A number of other issues were raised in this appeal. If, upon reconsideration, the head exercised his discretion not to charge a fee, that would dispose of the appeal. However, if the head exercised his discretion in favour of charging a fee, it was necessary to address the other issues.

The Commissioner found it is the responsibility of the requester to raise the question of fee waiver under subsection 57(3). However, he stated that the *Act* does not require this request to be explicit or in writing. It is satisfactory for a requester to invoke the provisions of subsection 57(3) by any conduct which could reasonably be expected to make the institution aware that the fee estimate is being questioned. The Commissioner stated that if the issue of fee waiver is not raised by the appellant, a head does not have a duty to consider waiver. However, this does not preclude a head from considering waiver even in the absence of a request for waiver.

The Commissioner found that the wording of subsection 57(3) creates an exhaustive list of the matters to be considered by the head in determining if a waiver of all or any part of a fee is appropriate.

The Commissioner summarized the relationship between subsections 57(1) and 57(3) of the *Act*. Subsection 57(1) gives the head a general discretion to charge or not charge a fee based on all the relevant factors in a given request.

If this discretion is exercised in favour of charging a fee and a requester, in some manner requests a waiver, the head must then consider whether or not any of the enumerated categories of subsection 57(3) apply. The discretion under subsection 57(1) alerts the head that, while he may decide to do so, he is under no obligation to charge a fee in each case. The discretion under subsection 57(3) on the other hand, speaks to more specific categories where a fee may be waived when the head has otherwise determined that a fee should be charged.

In this appeal, the Commissioner did not accept the argument of financial hardship put forward by the appellant and found that the grounds for waiver under subsection 57(3) did not apply.

The appellant also submitted an argument for waiver of fees based upon the special role of the media in educating and informing the public. While the Commissioner had sympathy for this argument, he reiterated that the considerations for waiver listed in subsection 57(3) are exhaustive and do not include any specific recognition of a special status for the media. The Commissioner noted that this is not the case in the United States, where the *Freedom of Information Reform Act, 1986* recognized a special role of the news media by treating them as a special class of requester.

The appellant raised a further argument to the effect that charging of fees infringes upon freedom of the press. The Commissioner found that the concept of a fee which is reasonably calculated and rationally connected to the requested service is a wrong of constitutional dimensions was extravagant.

The Commissioner found that the fee estimate was properly calculated in



accordance with the provisions of subsection 57(1) of the *Act*, except for the calculation of preparation time. In calculating preparation time under subsection 57(1)(b), the institution did not make a distinction between the time involved in actually making severances within the records, and time spent reviewing records to decide whether or not an exemption applied. The Commissioner found that the fee estimate for preparation which included costs associated with both decision-making and severing was an improper interpretation of subsection 57(1)(b). The Commissioner determined that the time spent making a decision as to the application of an exemption must not be included when calculating fees related to preparation of a record for disclosure nor is it proper to include time spent for such activities as packaging records for shipment, transporting records to the mailroom or arranging for courier service. The Commissioner therefore ordered that the estimate for preparation time in this case be recalculated in accordance with the provisions of subsection 57(1)(b).

### **Order No. 5 Appeal No. 880091** (July 18, 1988)

A portion of a request made to the Office of the Premier under the *Freedom of Information and Protection of Privacy Act, 1987* was transferred to the Archives of Ontario. The request was for correspondence from June 1983 to June 1985 between the Premier and the Ministries, the general public and religious leaders relating to the decision to extend government funding to separate schools. The institution provided the appellant with a fee estimate

of \$5,100.00 for the records requested, consisting of \$36.00 search time, \$4,320.00 preparation time, \$720.00 reproduction costs, and \$60.00 shipping costs. (The error in calculation was remedied at the inquiry.) The requester was asked to make a deposit of \$2,550.00.

Please refer to the summary of the Order in Appeal No. 880009 as the issues addressed in that appeal are identical to those raised in this appeal. As in Appeal No. 880009, the Commissioner ordered that this request be returned to the head for reconsideration and the appropriate exercise of discretion within 20 days of the date of the order. Determinations were made on subsequent issues which would become relevant should the head exercise his discretion in favour of charging a fee.

The only divergence the Commissioner made from the resolution of issues in Appeal No. 880009 was in his discussion of whether the amount of the estimated fee was properly calculated. The Commissioner commended the institution for the thorough manner in which the fee estimate was prepared.

The Commissioner noted that the major component of the estimated fee represented costs of preparing the record for disclosure under subsection 57(1)(b) of the *Act*. The Commissioner determined that the fee estimate properly included costs associated with the time involved in actually making severances within the records but not time spent reviewing records to decide whether or not an exemption applied.

### **Order No. 6 Appeal No. 880005** (July 18, 1988)

The appellant applied to the Ministry of Revenue requesting, among other records, "any reports evaluating/assessing the operation of the *Land Speculations Tax Act*." The appellant asked to examine the records in Ottawa and to have the fees waived. The request was subsequently transferred to the Ministry of Treasury and Economics. The Ministry informed the appellant that arrangements had been made for viewing the documents requested in the Ministry Reading Room located in Toronto. A fee estimate of \$48.30 was forwarded, consisting of \$32.80 for photocopying charges, \$12.00 for preparation costs and \$3.50 for shipping.

The Commissioner ordered that the head make the records available for viewing in Ottawa within 20 days of the date of the order. In coming to this decision, he referred to subsection 30(2) of the *Act* which outlines the method of access to records. While the Commissioner acknowledged that this subsection does not specifically require an institution to provide requesters with an opportunity to view the record at the location of their choice, he stated that an assessment must be made as to whether or not the requester's preferred location is acceptable based on whether or not it is "reasonably practicable". The Commissioner stated that in keeping with the overall principles of the *Act* it is the responsibility of a head to demonstrate that the means of viewing suggested by a requester is not reasonably practicable.

In weighing the concerns put forth by the head in this case, the Commissioner concluded that the head had not established that it would not be

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reasonably practicable to allow the appellant to view the records in question in Ottawa.

With respect to the fees appeal, the Commissioner found that the shipping charges claimed by the head in this case fall within the scope of subsection 57(1)(d) and were allowable. In addition, if, after viewing the record in Ottawa, the appellant requested photocopies of the record, these costs would be allowed under subsection 57(1)(c), subject to consideration of the fee waiver provisions of subsection 57(3). Similarly, the cost of preparing the record, estimated in accordance with subsection 5(2) of Ontario Regulation 532/87 is allowable under subsection 57(1)(c).

The Commissioner found that subsection 57(1) of the *Act* provides the head with discretion as to whether or not a fee is charged in an individual case. The Commissioner found no error in the exercise of the head's discretion in favour of charging a fee in this case.

Subsection 57(3) provides the head with a discretion to waive fees when it is fair and equitable to do so. In this case, the head indicated that subsection 57(3) was reviewed in detail and that no circumstances existed under which he should exercise his discretion to waive all or any part of the amount required to be paid under the *Act*.

The appellant submitted that "the records sought are in the public interest; the data would hopefully receive public dissemination; and the records in part are tools, or should be viewed first..." The appellant further submitted that the threshold level of \$5.00 established by the regulation was far too low and urged the Commissioner to come to a more sensible and "true cost" threshold.

The Commissioner found that there were insufficient grounds for a waiver of fees under subsection 57(3) therefore the decision of the head to charge the fee was upheld.

The issue of a threshold or minimum fee was dealt with by the Commissioner in a previous Order (Appeal No. 880003 - see Newsletter Vol.1 Issue 1).

The Commissioner concluded by stating that one of the fundamental purposes of the *Act* is to facilitate access to government information promptly and at the lowest cost to the public. While the Commissioner recognized the Legislature's intention to include a "user pay" principle evidenced by section 57 of the *Act*, he asserted that the government must apply this section in a way that is both reasonable and rational.

### **Order No. 7 Appeal No. 880011 (July 18, 1988)**

The appellant applied to the Ministry of Treasury and Economics requesting access to: "reports, assessments of Stelco-Red Lake Mine tax break - briefings on this and public, political reaction to the Minister (1985-1987);... the 1986 and 1987 Catalogue of statistical files;... any assessment/reports prepared reacting to or reviewing the last three Provincial Auditor Reports after each release;... and a report in 1986/1987 by Coopers and Lybrand on the Exploracom Computer Project." The appellant asked to examine the records in Ottawa and to have the fees waived.

The Ministry advised the appellant that his request for reports and assessments of the Stelco-Red Lake Mine tax break, as well as briefings on the tax break had been located and that if he would like copies of the documents sent to him by mail, the estimated fee for the record was \$57.30. This fee consisted of \$12.00 for search time, \$30.00 for photocopying, \$12.00 for preparation, and \$3.30 for shipping. The Ministry informed the appellant that his request for the Catalogue of statistical files for the years 1986 and 1987 could not be filled because the last issue was published in 1981. A fee of \$47.00 was quoted for photocopying and shipping of the 1981 issue. The assessment/reports prepared reacting to or reviewing the Provincial Auditor's Annual Reports were located. The Ministry quoted an estimated fee of \$23.50, consisting of \$10.00 for photocopying charges, \$12.00 for preparation and \$1.50 for shipping. The appellant's request for a copy of the 1986-1987 Exploracom report was transferred to the Ministry of Industry, Trade and Technology.

In his letter to the Commissioner appealing the decision to charge a fee and the amount of the fee, as well as the decision not to make the record available for examination in Ottawa, the appellant indicated that all of the points raised in Appeal No. 880005 would apply to this appeal. In fact, the representations received by both parties in respect of this appeal were identical to those received in respect of Appeal No. 880005.

For reasons given in Appeal No. 880005, the Commissioner ordered the institution to produce the records for viewing by the appellant in Ottawa within 20 days of the date of this Order. The Commissioner upheld the head's refusal to waive the fees and his decision to charge fees.



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**Order No. 8**  
**Appeal No. 880014**  
(July 18, 1988)

The appellant applied to the Ministry of Revenue requesting access to "records prepared in response to the last three Provincial Auditors Reports before or after release of these reports, as they relate to your agency." The appellant asked to examine the records in Ottawa and to have the fees waived. The Ministry informed the appellant that it would not send the original documents to Ottawa. Copies would be provided, however the head determined that there was no reason to waive the costs of photocopying. A fee estimate of \$18.97 was forwarded, consisting of \$13.80 for photocopying charges and \$5.17 for shipping.

The Commissioner ordered that the head make the records available for viewing in Ottawa within 20 days of the date of the order. The issues addressed in Appeal No. 880005 are identical to those raised in this appeal.

**Order No 9**  
**Appeal No. 880016**  
(July 28, 1988)

The appellant applied to the Ministry of Health requesting access to: "the names and locations of doctors who have extra-billed after Bill 94 came into force; any reports reviewing such extra-billing or reporting on complaints received; ...medical areas... [or] OHIP fee areas that doctors have been practicing extra-billing; ...[and] the techniques used to claim for extra-billing." The Ministry determined that no reports existed which reviewed extra-billing or reported on complaints received. The Ministry provided access

to a number of records, for example, the geographical location of the doctors who extra-billed, their specialties, the type of additional charges, etc. The physicians' names, OHIP registration numbers and the dates on which they opted in or out of OHIP were severed from the records released to the appellant. The appellant appealed the decision of the Ministry to sever this information from the records.

The Commissioner upheld the decision of the Ministry to withhold the severed information from disclosure. However, this decision was based, not on a balancing of competing privacy and access interests, but on a "mechanical" application of the law. In this appeal, the institution relied upon section 44 of the *Health Insurance Act*, R.S.O. 1980, c.197 and section 7 of the *Health Care Accessibility Act*, S.O. 1986, c.20 as "confidentiality provisions" which forbid the disclosure of the information requested by the appellant.

The Commissioner addressed the issue of whether the legislative provisions relied on by the institution are "confidentiality provisions" barring the application of the *Freedom of Information and Protection of Privacy Act*, 1987. Subsection 67(2) provides that the *Act* overrides "confidentiality provisions" in other legislation, unless the other legislation specifically provides otherwise. However, because subsection 67(3) of the *Act* delays the application of subsection 67(2) until January 1, 1990, a head may be bound not to disclose information pursuant to a "confidentiality provision" contained in another piece of legislation until that date.

The Commissioner was satisfied that the two provisions (s.44 and s.7) qualified as "confidentiality provisions" as the term is used in section 67 of the *Act*. Accordingly, the Commissioner

held that these provisions do operate to forbid the head to disclose "all matters that come to his attention in the course of his employment or duties" with certain exceptions for particular types of information.

The second issue the Commissioner addressed was whether the severed information fell within the scope of the "confidentiality provisions". The Commissioner noted that both the *Health Insurance Act* and the *Health Care Accessibility Act* contained exceptions to the requirement that "all matters" coming to the attention of certain individuals in certain circumstances shall not be communicated. The Commissioner held that the names of doctors who provided health care services must be considered information included in the phrase "all matters" and accordingly, fall under the general prohibition against disclosure contained in the *Health Insurance Act*. Although the appellant did not request the OHIP billing numbers and dates when doctors opted in or out of the plan, the Commissioner did determine that this information comes within "all matters... pertaining to... insured services rendered and the payments made therefore".

In concluding, the Commissioner made certain statements with respect to the scope of his authority to review "confidentiality provisions" and to view records allegedly covered by such provisions. The Commissioner stated that while the head of an institution must determine at first instance whether a particular statutory provision is a "confidentiality provision" precluding access to the requester, the Commissioner, as well, must be assured of the relevance and the application of the provision upon receipt of an appeal. The Commissioner regards this duty as fundamental to the effective operation of the *Act*.

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The Commissioner did not accept that a "confidentiality provision" applied to preclude the application of the *Act* without also ensuring that the provision in question relates to the specific record sought by the requester. The Commissioner stated that mere reliance on the assertions of the institution, without the right to inspect the record by the Commissioner, cannot possibly inspire confidence on the part of the public that the principles enshrined in the *Act* have been protected. The Commissioner quoted subsection 52(4) of the *Act* which sets out the powers of the Commissioner as supporting this approach.

Accordingly, the Commissioner stated that it is his intention to fully review the application and scope of any legislative "confidentiality provisions" which are invoked by institutions in denying access to records requested by an appellant. In so doing, the Commissioner stated he will determine on a case-by-case basis the extent to which he must examine those records to ensure that they are covered by the provisions relied upon.

The Commissioner found that in the circumstances of this appeal, section 44 of the *Health Insurance Act* and section 7 of the *Health Care Accessibility Act* operated as "confidentiality provisions" barring the application of the *Act* in respect of the information that was severed by the institution.

### **Order No. 10 Appeal No. 880042 (July 28, 1988)**

The appellant applied to the Ministry of the Solicitor General requesting access to all personal information about himself in the control of the Ministry and "2346 pages of O.P.P. reports on alleged corruption in the York Sheriff's Department". The Ministry provided the appellant with a fee estimate of \$147.20, consisting of \$51.20 for photocopying and \$96.00 for preparation time. The appellant appealed the decision to charge a fee and the amount of the fee.

The Commissioner dismissed the appeal. In reaching this conclusion, the Commissioner first addressed whether the amount of the estimated fee was properly calculated in accordance with subsection 57(1) of the *Act*. The Ministry submitted that although the relevant record was reduced to 320 pages, because of references to several individuals "considerable severing of personal information is required". Furthermore, the estimated photocopying charges were based on a rate of 20 cents per page for the 256 pages which did not contain personal information or information that should be withheld pursuant to the *Act*. The Commissioner found that the photocopying charges were consistent with the fee charges outlined in Ontario Regulation 532/87 and that the activity included within the scope of preparation time under subsection 57(1)(b) was proper and not excessive.

The second issue addressed by the Commissioner was whether the head's decision not to waive the fee under subsection 57(3) of the *Act* was in accordance with the terms of the *Act*. In addressing this issue, the Commissioner made reference to the interpretation

of the wording of this subsection in a previous Order (see Order in Appeal No. 880091). In that Order, the Commissioner found that if a head properly decides that a fee should be charged under subsection 57(1), he must then consider whether or not any of the enumerated matters in subsection 57(3) apply. The Commissioner further stated that it is the responsibility of the requester to provide adequate evidence to support a claim for fee waiver. In this case, the appellant claimed financial hardship under subsection 57(3)(b), but offered no evidence to support this claim. As such, the Commissioner upheld the institution's position that the grounds for waiver under subsection 57(3) did not apply.

### **Order No. 11 Appeal No. 880022 (August 3, 1988)**

The appellant applied to the Ministry of Skills Development requesting access to Job Competition File SD 4096 including applications and resumes of interviewed candidates, criteria and rating sheets, interview schedules and correspondence, and the qualifications of the successful candidate. The Ministry granted partial access to this file. Access to applications and resumes of all candidates was denied pursuant to subsections 21(1)(f) and 21(3)(d) of the *Freedom of Information and Protection of Privacy Act, 1987*. The appellant appealed the denial of access to the applications and resumes of other candidates.

The Commissioner upheld the head's decision to deny access to the records at issue. In making this determination, the Commissioner addressed three



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issues. First, whether information contained in the records was personal information pursuant to sections 2 and 21 of the *Act*.

In its letter responding to the appellant's access request, the institution relied upon subsection 21(1)(f) in refusing disclosure of the records. The Commissioner stated that reliance on this subsection to prevent disclosure may be somewhat confusing to requesters as the wording of the subsection reads as an exception to non-disclosure.

The exemption itself is set out in subsection 21(1) of the *Act*. In deciding whether the information contained in the records constituted "personal information" as defined in the *Act*, the Commissioner made reference to subsection 2(1) of the *Act* and concluded that this definition was not exhaustive. On reviewing the records, the Commissioner found that the names, addresses, employment history, educational history, etc. contained therein was personal information. As such, The Commissioner found that pursuant to the mandatory subsection 21(1) exemption of the *Act*, the head of the Institution was compelled to refuse disclosure unless one of the statutory exceptions to that general rule applied.

The Commissioner determined whether disclosure of the records to any person other than the individuals to whom the information related could be presumed to be an unjustified invasion of personal privacy. The clauses listed under subsection 21(3) of the *Act* describe a number of situations in which disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy. The Commissioner agreed with the Ministry that the refusal to disclose the records at issue was justified under subsection 21(3)(d) which states that disclosure

of information that "relates to employment or educational history" is presumed to constitute an unjustified invasion of personal privacy.

Following this determination, the Commissioner canvassed the *Act* to determine whether any provisions applied to rebut the presumption. Subsection 21(4) of the *Act* provides limitations on the presumption set out in subsection 21(3) of the *Act*. The Commissioner determined that the information contained in the records in issue did not fall within the circumstances set out by this subsection. The Commissioner also stated that subsection 21(2) of the *Act* provides some criteria which, if relevant, may be considered in determining whether the presumed invasion under subsection 21(3) is rebutted. However, after reviewing the criteria set out in this subsection, the Commissioner found that none of the factors mentioned therein outweighed the presumption of unjustified invasion of personal privacy in this case.

## **Order No. 12**

### **Appeal No. 880024**

(August 3, 1988)

The appellant applied to the Ministry of Community and Social Services, as agent for a landlord, requesting access to the current address of one of the landlord's former tenants. The Ministry refused to confirm or deny the existence of a record containing the requested information pursuant to subsection 21(5) of the *Act*. The appellant appealed the decision of the Ministry.

In upholding the head's decision to refuse to confirm or deny the existence

of a record, the Commissioner addressed two issues. First, the Commissioner determined whether the disclosure of the requested information, if it existed in the custody of the institution, would constitute an unjustified invasion of personal privacy for the purposes of section 21 of the *Act*. Both parties agreed that the requested information would fall within the definition of personal information under subsection 2(1) of the *Act*. The Ministry submitted that the names and addresses of individuals, which are collected by it as part of the administration of social assistance benefits, fall within subsection 21(3)(c) of the *Act*, disclosure of which is presumed to constitute an unjustified invasion of personal privacy. Furthermore, the Ministry submitted that if the presumption under subsection 21(3)(c) is found not to exist, some of the criteria referred to in subsection 21(2) apply and supports the position that disclosure would constitute an unjustified invasion of personal privacy.

The Commissioner found that the requirements for a presumed invasion of personal privacy under subsection 21(3)(c) did not exist. The information in question, without more, does not relate to eligibility for social services or welfare benefits or the determination of benefit levels, and as such, does not meet the test of subsection 21(3)(c). However, the Commissioner did find that the release of the information in question, if it does exist, would result in an unjustified invasion of privacy. The Commissioner accepted the Ministry's arguments that the information in question falls under subsection 21(2)(h), in that it contains personal information that, if present within the Ministry, would have been supplied in confidence. The Commissioner also accepted the Ministry's argument that the former tenant's address, if it exists in the institution,



qualifies as "highly sensitive" personal information under subsection 21(2)(f).

The Commissioner agreed with the Ministry's position that section 23 bolsters the privacy protection portion of the *Act* in this instance. That section provides that an exemption from disclosure of a record under section 21 does not apply where a "compelling public interest" in the disclosure of the record outweighs the purpose of the exemption. The Commissioner also noted that section 23 does not refer to a "private" interest such as that of the appellant's client. The Commissioner stated that the appellant's interest failed on both counts; it is neither compelling nor a public interest.

The second issue addressed by the Commissioner was whether the head had properly exercised his discretion under subsection 21(5) of the *Act* to refuse to confirm or deny the existence of the record. The Commissioner stated that on a plain reading of the subsection, the head has discretion to refuse to confirm or deny the existence of a record if it has been established that disclosure of the record would constitute an unjustified invasion of personal privacy. As long as this discretion has been exercised reasonably, it should not be disturbed on appeal. In this case, the Commissioner found that there was no evidence of unreasonableness on the part of the head in the exercise of his discretion.

**Order No. 13**  
**Public Service Superannuation Fund (31 Appeals covered by same order)**  
(August 17, 1988)

The appellants applied to the Ministry of Correctional Services requesting access to a portfolio showing what investments had been made with contributions to the Public Service Superannuation Fund. The Freedom of Information Co-ordinator advised the appellants that neither the Ministry of Correctional Services nor the Ministry of Government Services had such a record. However, the Co-ordinator contacted the Ministry of Treasury and Economics and obtained whatever information did exist about the Fund. This information was forwarded to the appellants. The appellants requested a review on the basis that this information was insufficient.

As a preliminary matter, the Commissioner concluded that the nature of the information sought in the request was clear and that it was not necessary to reformulate the request pursuant to subsection 24(2) of the *Act* in order to identify the record, if it existed.

The main issue addressed by the Commissioner was whether all reasonable steps were taken to locate a record which might provide the information requested. The Commissioner acknowledged that the Co-ordinator did more than was required of her in her attempts to satisfy the requests for information. Before she could transfer the request to another institution under the *Act*, she was required under section 25 to determine which institution, if any, would have custody or control of such a record. After being unable to identify such an institution, the Co-ordinator tried to obtain some information about the Fund.

The Commissioner stated that the Co-ordinator was not obliged to "create" a record to answer the appellants' request under the *Act*, but she did so anyway, with the assistance of the Ministry of Treasury and Economics.

The Commissioner stated that following his investigation and inquiry, he was satisfied that there was no record in existence which specifically answered the questions asked by the appellants. Furthermore, although the appellants were not satisfied with the answers contained in the record created by the Co-ordinator, the Commissioner asserted that, in his view, the record did answer the questions asked. The Commissioner also stated that he had no mandate under the *Act* to comment upon how pension funds are invested.

The Commissioner found that the Co-ordinator took all reasonable steps to locate a record which might provide the information requested, and as such, the Ministry complied with the requirements of the *Act*.

**Order No. 14**  
**Appeal No. 880002**  
(August 25, 1988)

The appellant applied to the Ministry of Community and Social Services requesting access to her personal file, specifically that portion relating to the estate of her late brother and the identity of the party who supplied this information to the institution. The Ministry denied access to the file in accordance with subsections 14(1)(d), 21(2)(h) and 21(3)(b) of the *Act*. Later, the Ministry added subsections 49(a) and (b) as a basis for denial.

The Ministry submitted that it received information from a third party with respect to the appellant's claim for family benefits. On confirming this information, the Ministry terminated the Appellant's benefits.

The Ministry agreed to partial disclosure of the information contained in the file requested by the appellant. Given the nature of the appeal, it was not possible for the Commissioner to identify the particulars of the items withheld.

The Commissioner upheld the decision of the head to refuse to disclose the records in issue. In reaching this conclusion, the Commissioner addressed two issues.

The first issue was whether disclosure of the records in question would constitute an unjustified invasion of another person's personal privacy, and thereby fall within the exemption under subsection 49(b) of the *Act*. The Commissioner found that the information contained in the records fell within the definition of "personal information" set out in subsection 2(1) of the *Act*.

The Commissioner stated that in determining whether or not disclosure of this information would constitute an unjustified invasion of another individual's personal privacy, a head must consider all relevant circumstances and need not be restricted to the specific criteria listed in the *Act*. After considering the nature of the personal information and the manner in which the information was received by the Ministry, the Commissioner found that disclosure of the records in question would constitute an unjustified invasion of the personal privacy of the third party.

The second issue addressed by the Commissioner was whether the records in issue might reasonably be severed pursuant to subsection 10(2) of the *Act*. After reviewing the records in issue, the Commissioner saw no reasonable way to make any severances which would effectively prevent the disclosure of information which should be exempted.

### **Order No. 15 Appeal No. 880010 (September 8, 1988)**

The appellant applied to the Ministry of Consumer and Commercial Relations for access to any 1986 - 87 investigation reports related to funeral firms. The Ministry responded that such reports would be records as described in subsection 14(2)(a) of the *Act* and under subsection 14(3), the existence of such records would neither be confirmed nor denied. The application of subsection 14(1) of the *Business Practices Act*, R.S.O. 1980, c.55 as a "confidentiality provision" was raised, for the first time, in the written submissions received from the Ministry.

The Commissioner found that, in the circumstances of this appeal, subsection 14(1) of the *Business Practices Act* operated as a "confidentiality provision" barring the application of the *Freedom of Information and Protection of Privacy Act*, 1987 in respect to the information requested. The Commissioner also found that the information requested, if it existed, would fall within the scope of this "confidentiality provision", and therefore he could not interfere with the head's decision. In coming to this determination, the Commissioner canvassed three issues.

As a preliminary matter, the Commissioner addressed whether the Ministry could raise a new reason for not disclosing a record after an appeal had been filed. The Commissioner stated that the introduction of new or different grounds for refusing access to records at the appeal stage should be the exception rather than the rule. In this case, the appellant was advised of the new issue raised by the Ministry, given an opportunity to respond, and did so.

The second issue addressed by the Commissioner was whether subsection 14(1) of the *Business Practices Act* is a "confidentiality provision" which bars the application of the *Freedom of Information and Protection of Privacy Act*, 1987. In addressing this issue, the Commissioner relied on the reasoning set out in Appeal No. 880016. The Commissioner stated that it was his responsibility to scrutinize the legislative provision in question where an institution purports to remove itself from the ambit of the *Act* through the use of a "confidentiality provision" in another act. In these circumstances, the Commissioner does not engage in a balancing of the interests of access and privacy.

The Commissioner stated that section 67 of the *Act* does not contain an exemption to the *Act's* disclosure obligations. The Commissioner stated that rather, subsection 67(2) provides that the *Act* overrides "confidentiality provisions" in other legislation, unless the other legislation specifically provides otherwise. However, the Commissioner acknowledged that as subsection 67(3) delays the application of subsection 67(2) until January 1, 1990, a head may be bound not to disclose information pursuant to a "confidentiality provision" contained in another piece of legislation until January 1, 1990.



After canvassing section 14 of the *Business Practices Act*, the Commissioner determined that this provision constitutes a "confidentiality provision" as the term is used in section 67 of the *Freedom of Information and Protection of Privacy Act*, 1987.

The last issue addressed by the Commissioner was whether the records, if they existed, would fall within the scope of the "confidentiality provision". In answering this question, the Commissioner determined that the requested information must be considered information included in the phrase "all matters" appearing in the provision and, therefore, fell under the general prohibition from disclosure in section 14 of the *Business Practices Act*.

## Order No. 16

**Appeal Nos. 880025, 880041, 880060, 880061, 880062, 880063, 880064, 880065, 880080, 880081**  
(September 8, 1988)

The appellant applied to the Ministry of Agriculture and Food requesting access to all 1987 meat inspection reports for meat packing plants located in eastern Ontario. The Ministry notified the appellant that the operators of the meat packing plants involved would be given the opportunity to make representations as to why the reports should not be released. The Ministry received representations from six of approximately thirty-five plant operators.

After considering these representations, the Ministry severed from the report the names, locations and plant numbers in accordance with subsec-

tion 17 (1)(a) of the *Act*. A fee for the preparation of the records was estimated at \$18, consisting of 45 minutes at \$6 for each 15 minute period.

Eight of the plant operators (hereinafter referred to as the "third party appellants") appealed the decision of the head to grant partial access.

The appellant appealed the Ministry's decision to sever the identifying information from the reports; requested immediate access to the reports of those affected parties who did not appeal the Ministry's decision to grant partial access; requested the identity and written representations received by the Ministry from the third party appellants which had been refused pursuant to section 21 of the *Act*; and appealed the Ministry's decision to charge a fee of \$18 and not grant a fee waiver. (The latter is the sole issue in Appeal No. 880081.)

The Commissioner's office sent notice to the appellant, the Ministry, the third party appellants and the affected parties who had not appealed, that an inquiry into these matters would be undertaken. Representations were received from the appellant, the Ministry, three third party appellants, eight affected parties and a meat packers trade association on behalf of its members.

The Commissioner ordered the Ministry to produce all the 1987 meat inspection reports for eastern Ontario, without severances, for viewing by the appellant in Ottawa. In coming to this determination, the Commissioner canvassed six issues.

First, the Commissioner addressed the issue of whether any parts of the 1987 reports fell within the section 17 exemption. The Commissioner stated that in order to fall within section 17

of the *Act*, the reports must meet a three-part test:

- They must contain third party information that is a trade secret, or scientific, technical, commercial, financial or labour relations information; and
- The information in the reports must have been supplied by the third party to the Ministry in confidence, implicitly or explicitly; and
- The prospect of disclosure of the reports must give rise to a reasonable expectation that one of the types of injuries specified in (a), (b) or (c) of subsection 17 (1) will occur.

The Commissioner determined that the Ministry's proposed severances of name, location and plant number would not reveal any of the types of information enumerated in subsection 17(1) if disclosed, and therefore did not meet the first part of the test. As a result, the Commissioner did not uphold the Ministry's decision. The third party appellants argued that access to the entire reports should be refused under section 17. In response to this argument the Commissioner determined that the information contained elsewhere in the records was not any of the types of information listed in subsection 17(1) of the *Act*.

While not necessary for the disposition of this appeal, the Commissioner dealt briefly with the remaining two parts of the test. The Commissioner stated that the information in the inspection reports was not supplied by the third parties to the Ministry as required by the *Act*. Rather, the Ministry obtained the information itself through inspections required by statute.

Finally, with respect to the third part of the test, the Commissioner stated

that neither the Ministry nor any of the third party appellants provided any evidence to support an allegation of possible harm.

The second issue addressed by the Commissioner was whether the appellant was entitled to know the identity of the third party appellants and be provided with their representations. The Commissioner stated that the release of the names of third party appellants is something that should be decided on a case-by-case basis. Generally, releasing these names would not create a problem. However, as in this case, if by releasing the names, the very information at issue in the appeal is released, the names cannot be released.

The third issue addressed by the Commissioner was whether any part of the reports qualified as "personal information" and, if so, whether the disclosure of the information would constitute an unjustified invasion of personal privacy pursuant to section 21 of the *Act*.

The Commissioner determined that the use of the term "individual" in subsection 2 (1) of the *Act* makes it clear that the protection provided with respect to the privacy of personal information relates to natural persons. As such, the information in question did not qualify as information about an identifiable individual. The Commissioner concluded, therefore, that disclosure of the reports would not constitute an unjustified invasion of personal privacy pursuant to section 21 of the *Act*.

The fourth issue addressed by the Commissioner was whether the Ministry was correct in refusing to provide the appellant with immediate access to the severed reports of the affected parties who did not appeal the Ministry's decision. The Commissioner set

out the Ministry's statutory obligations with respect to affected parties which are found in section 28 of the *Act*. The Commissioner concluded that because only eight parties appealed the Ministry's decision, the Ministry was obliged to release the severed records of those affected parties who did not appeal after the time for appeal by the affected parties had expired.

The fifth issue addressed by the Commissioner was whether the amount of the fee estimate was in accordance with the terms of the *Act*. Since the Commissioner ordered the release of reports without severances no preparation costs would be incurred.

The final issue addressed by the Commissioner was whether the Ministry's decision not to waive fees was in accordance with the terms of the *Act*. As a result of the Commissioner's decision that it was no longer necessary for the Ministry to incur the \$18 preparation cost, this ground of appeal had been otherwise resolved.

## **Order No. 17**

### **Appeal No. 880078**

(October 6, 1988)

The appellant applied to the Ministry of the Solicitor General requesting access to all "verbal or written" information relating to two job competitions and all "verbal or written" information relating to the early termination of her employment contract. The Ministry granted the appellant access to her own personnel and job competition files. Information about other candidates in the job competition files was severed from the records pursuant to section 21 of the *Freedom of Information and Protection of Privacy Act*, 1987.

The appellant claimed that four classes of records were being withheld. These items were: a test score; a list of persons contacted for references; notes of comments or recommendations from two superiors regarding one of the job competitions; and notes of comments or recommendations from two superiors regarding the termination of her employment contract.

The Commissioner first addressed the issue of whether the Ministry had made reasonable efforts to identify and locate the personal information requested by the appellant and determined that they had.

In its representations, the Ministry outlined the steps taken to identify and locate the personal information requested. After an initial search, certain documentation was released to the appellant. The Ministry conducted a further search and ultimately located additional interview notes which were subsequently provided to the appellant.

The Ministry explained why the test score which the appellant believed was being withheld did not exist. The Commissioner noted the appellant's satisfaction with the explanation and stated that he was satisfied that the test score did not exist.

With respect to the list of persons contacted for references, the Ministry submitted that it is their policy to contact references near the end of the job competition. As the appellant was not successful in proceeding to that stage, none of her references were contacted. The Commissioner noted the appellant's satisfaction with this explanation and stated that he was satisfied that no references were contacted.

The Commissioner also indicated his satisfaction that no records existed with



respect to comments or recommendations regarding the job competition and the termination of the appellant's employment contract. By way of summary, the Commissioner stated that he was satisfied that the Ministry had made reasonable efforts to identify and locate the personal information requested by the appellant and that it had provided to her all existing recorded information relating to her access request.

The second issue addressed by the Commissioner was whether the oral comments or recommendations of the appellant's superiors regarding the job competition and the termination of the appellant's employment contract were "personal information" which gave rise to a right of access.

The Commissioner noted that section 47 of the *Act* provides the appellant with a right of access to personal information. Subsection 47(a) states that the personal information must be "contained in a personal information bank in the custody or under the control of an institution".

### **Order No. 18 Appeal No. 880086** (October 6, 1988)

The appellant applied to the Ministry of Health requesting information on the particulars of the operations of Bill 94 (*Health Care Accessibility Act*). In particular, the appellant requested the periodic reports that show the number of declarations seeking reimbursement for additional charges by physicians, and those approved by the Ministry.

The Ministry granted disclosure of the requested records. However, the physicians' names, OHIP registration numbers and the dates on which they opted in or out of OHIP were severed from the records pursuant to section 67 of the *Freedom of Information and Protection of Privacy Act, 1987*.

The Commissioner noted that the issues arising in this appeal were identical to those considered previously in the Order issued in Appeal No. 880016 released July 28, 1988.

As in that appeal, the Commissioner found here that section 44 of the *Health Insurance Act* and section 7 of the *Health Care Accessibility Act* operated to bar the application of the *Freedom of Information and Protection of Privacy Act, 1987* in respect to the information requested by the appellant. Accordingly, the Commissioner could not interfere with the decision of the head.

In making this determination, the Commissioner addressed the issue of whether the legislative provisions relied on by the institution were "confidentiality provisions" barring the application of the *Freedom of Information and Protection of Privacy Act, 1987*. The Commissioner stated that section 67 did not contain an exemption to the *Act's* disclosure obligations. Rather, subsection 67(2) provided that the *Act* overrides "confidentiality provisions" in other legislation, unless the other legislation specifically provides otherwise. However, because subsection 67(3) delays the application of subsection 67(2) until January 1, 1990, a head may be bound not to disclose information pursuant to a "confidentiality provision" contained in another piece of legislation until that date.

The Commissioner also stressed that he did not engage in a balancing of access and privacy interests in situ-

ations such as these where a Ministry relies upon a "confidentiality provision" so as to remove itself from the ambit of the *Act*. The Commissioner stated that he will continue to subject each "confidentiality provision" to his independent analysis and scrutiny.

### **Order No. 19 Appeal No. 880055** (October 7, 1988)

The appellant applied to the Ministry of Correctional Services requesting access to a copy of her probation case file covering the period from January 1987 to January 7, 1988. The Ministry forwarded a number of photocopies of documents but withheld the following:

- 1) a psychological report prepared by the Regional Psychologist,
- 2) the casenotes of the Probation and Parole Officer, and
- 3) the Level of Supervision Inventory Form.

The Ministry advised the appellant that access to these records would be provided in the presence of the Regional Psychologist who would explain the records to the appellant. The Ministry relied on subsection 48(4) of the *Freedom of Information and Protection of Privacy Act, 1987* (the *Act*) which states that a head,

"...shall ensure that the personal information is provided to the individual in a comprehensible form and in a manner which indicates the general terms and conditions under which the personal information is stored and used."

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The appellant refused this condition of access and appealed the decision maintaining that it effectively denied her access to the requested records.

In the course of the inquiry, the Ministry agreed to release the casenotes and the Level of Supervision Inventory Form without an explanation, although it invited the appellant to meet with the Probation Officer. The Commissioner, therefore, ordered that the Ministry release these records.

The Commissioner also ordered the release of the Regional Psychologist's report. The Commissioner agreed that subsection 48(4) of the *Act* does place a duty on the head to "ensure that the personal information is provided to the individual in a comprehensible form". However, the Commissioner found that subsection 48(4) does not create a further duty on the head to assess a specific requester's ability to comprehend a particular record.

The Commissioner went on to find that the appellant, in this case, would have no difficulty in understanding or comprehending the contents of the record in question. The Commissioner saw the primary concern of the Ministry as being the possibility that the appellant might "misinterpret" the significance or use of medical or psychiatric terms in the record.

The Commissioner found that the personal information in question in this appeal was "medical information" under subsection 49(d) of the *Act*. While subsection 49(d) gives the head the discretion to release medical information, the Commissioner indicated that the Ministry had not suggested that the head had or should have exercised his discretion under subsection 49(d) in favour of non-disclosure. In the absence of any reference to this subsection in the Ministry's representa-

tions, the Commissioner concluded that the head felt the factors required for the application of subsection 49(d) were not present. The Commissioner concluded that the head must exercise his or her judgment and make a decision as to whether or not the prejudice contemplated by subsection 49(d) can be reasonably expected to arise as a result of the disclosure.

The Commissioner also noted that "personal information" is defined in subsection 2(1) of the *Act* as "recorded information about an identifiable individual...". Also defined in subsection 2(1) is the term "personal information bank" which is "a collection of personal information that is organized and capable of being retrieved."

The Commissioner stated that these key definitions indicate the Legislature's intention that an individual's right of access under the *Act* be to information already recorded or retrievable in some physical form. The Commissioner stated that the oral comments or recommendations at issue in this case could not be so characterized.

The Commissioner acknowledged the appellant's argument that the purposes of the *Act* were broad enough to include a duty to create a record from a conversation. However, the wording of subsection 1(b) of the *Act* refers to "personal information" which is defined in the *Act* at subsection 2(1) as "recorded information...". The Commissioner stated that as he had already determined that the Ministry had provided the appellant with all existing recorded information relating to her request, the appellant had not been denied access to her personal information. The Commissioner reiterated that the legislative intent of the *Act* did not impose a specific duty on a Ministry to transcribe oral views, comments or discussions.

## Order No. 20 Appeal No. 880075 (October 7, 1988)

The appellant applied to the Ministry of the Attorney General requesting access to rating information relating to herself and the successful candidate in a job competition. The Ministry granted access to a number of records relating to the evaluation of the appellant. Information concerning the successful candidate was withheld pursuant to subsection 21(3)(g) of the *Freedom of Information and Protection of Privacy Act, 1987*.

The Commissioner upheld the decision of the head to withhold information relating to the successful candidates and dismissed the appeal. In coming to this conclusion, the Commissioner first considered the issue of whether the ratings and test results were "personal information" as defined in subsection 2(1) of the *Act*.

The Commissioner determined that the ratings and test results fell within the definition of personal information.

The second issue addressed by the Commissioner was whether disclosure of the personal information (the ratings and test results of the successful candidate) would be an unjustified invasion of the personal privacy of that individual.

Subsection 21(3)(g) of the *Act* contains a presumption of an unjustified invasion of personal privacy for information which consists of personal recommendations or evaluations, character references or personnel evaluations. Having examined the contents of the records in question, the Commissioner concluded that both the ratings and test results consisted of "personal evaluations".



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In reviewing the operation of subsection 21(3) of the *Act*, the Commissioner noted that subsection 21(4) rebuts the presumption set out in subsection 21(3) in certain circumstances. In addition, the application of section 23 of the *Act* (compelling public interest) to a subsection 21(3) presumption, may also result in disclosure.

The Commissioner also stated that a subsection 21(3) presumption may be rebutted when a type of information listed under subsection 21(3) also triggers section 11 of the *Act*, which obliges the head to disclose any record "if the head has reasonable and probable grounds to believe that it is in the public interest to do so and that the record reveals a grave environmental, health or safety hazard to the public."

The Commissioner indicated that it was premature at this stage of the development of the *Act* to limit the means of rebutting the subsection 21(3) presumption to only those sections set out above. For example, a combination of the circumstances set out in subsection 21(2) of the *Act* might be so compelling as to outweigh a presumption under subsection 21(3). However, the Commissioner viewed such a case as being extremely unusual. In the present case, the Commissioner found that the presumption of an unjustified invasion of personal privacy had not been rebutted.

The final issue addressed by the Commissioner was whether the record could reasonably be severed under subsection 10(2) of the *Act* without disclosing information which falls under the exemption.

The Commissioner determined that although the Ministry was willing to provide access to total score results, this total score revealed the interviewer's

subjective evaluations of the successful candidate's skills and abilities and therefore the information fell within the definition of personal information. As such, the mandatory provisions of section 21 applied. Accordingly, the Commissioner concluded that the information in question fell under one of the exemptions and could not be reasonably severed pursuant to subsection 10(2) of the *Act*.

## **Order No. 21**

### **Appeal No. 880028**

(October 13, 1988)

The appellant applied to the Ontario Labour Relations Board requesting access to documents contained in a particular file. The institution granted access to all documents in the file except a Labour Relations Officer's Report and a Report of Labour Relations Officer Investigation of Complaint. The Board claimed an exemption under subsection 111(6) of the *Labour Relations Act*, R.S.O. 1980, c.228.

The Commissioner upheld the decision of the Board to claim this exemption and dismissed the appeal.

In coming to this conclusion, the Commissioner addressed the issue of whether the legislative provision relied on by the Board was a "confidentiality provision" barring the application of the *Act*.

As the Commissioner stated in previous Orders (Appeal Nos. 880010, 880016 and 880086), section 67 of the *Freedom of Information and Protection of Privacy Act*, 1987 does not contain an exemption to the *Act*'s disclosure obligations. The Commissioner stated that subsection 67(2) provides that

the *Act* overrides "confidentiality provisions" in other legislation, unless the other legislation specifically provides otherwise. However, because subsection 67(3) of the *Act* delays the application of subsection 67(2) until January 1, 1990, a head may be bound not to disclose information pursuant to a "confidentiality provision" contained in another piece of legislation until that date.

After reviewing subsection 111(6) of the *Labour Relations Act*, the Commissioner found that it qualified as a "confidentiality provision" as the term is used in section 67 of the *Freedom of Information and Protection of Privacy Act*, 1987.

The Commissioner stated that although the subsection prohibits disclosure, it also contains a discretionary power which authorizes the Board to disclose information obtained by a Labour Relations Officer, as well as a report of a Labour Relations Officer. The result is that subsection 111(6) is not an absolute prohibition against disclosure of information. As this particular provision bars the application of the *Freedom of Information and Protection of Privacy Act*, 1987 until January 1, 1990, the Commissioner encouraged the institution to suggest to Boards that they consider the release of information such as a Labour Relations Officer's report to those involved in a case.

The second issue addressed by the Commissioner was whether the records in question fell within the scope of the "confidentiality provision" relied on. The Commissioner found that the Labour Relations Officer's Report and the Report of the Labour Relations Officer Investigation of Complaint properly came within the definition of "information or material furnished to or received by a labour

relations officer" and a "report of a labour relations officer" contained in subsection 111(6) of the *Labour Relations Act*.

## **Order No. 22**

### **Appeal No. 880006**

(October 21, 1988)

The appellant applied to the Management Board of Cabinet requesting access to all records from June 1983 to June 1985 pertaining to the decision to extend government financing to separate schools, including reviews of the financial, political, educational or social impact, polls and correspondence with other ministries.

The Board advised the appellant that it did not have any reviews of the political, educational or social impact, or polls dealing with the extension of funding to separate schools in its custody. Accordingly, access was denied on the basis that the records did not exist.

The Board transferred the request for correspondence with other ministries to the Ministry of Education pursuant to section 25 of the *Freedom of Information and Protection of Privacy Act*, 1987. The portion of the request concerning financial impact was transferred in part to the Ministry of Treasury and Economics.

The Board denied access to a record concerning the financial impact of extension of government financing under subsection 12(1)(e) of the *Act*. The record in question was a document prepared to brief the Chairman of Management Board of Cabinet dated June 29, 1985. The Commissioner upheld

the decision of the head not to disclose the record.

The Commissioner found that the record did not fall within the exemption provided by subsection 12(1)(e) of the *Act*. The Commissioner stated that the use of the present tense in the subsection precluded its application to a record which had already been presented to Executive Council or its committees. The Board acknowledged that this matter had been brought before it and that the record in question would not be used again.

In addition, the Commissioner considered the interpretation of the introductory wording of subsection 12(1). The Commissioner concluded that the use of the word "including" in subsection 12(1) of the *Act* should be interpreted as providing an expanded definition of the types of records which are deemed to qualify as subject to the Cabinet records exemption, regardless of whether they met the definition found in the introductory text of subsection 12(1). The Commissioner noted that the types of documents listed in subparagraphs (a) through (f) are not the only ones eligible for the exemption and that any record which would reveal the substance of deliberations of an Executive Council or its committees qualifies for exemption under subsection 12(1). The Commissioner determined that the record at issue in this appeal met the definition of an exempt Cabinet record.

The second issue addressed by the Commissioner was whether the head had a duty under subsection 12(2)(b) of the *Act* to seek the consent of the Executive Council before denying access to a record where an exemption was claimed under subsection 12(1).

The Commissioner considered this is-

sue in his Order in Appeal No. 880006. In that Order, he determined that subsection 12(2)(b) did not impose an absolute requirement on the head to seek the consent of Cabinet in all cases where an exemption under subsection 12(1) is claimed by an institution.

The Commissioner reiterated his view that the discretion of the head to seek consent must be exercised irrespective of whether the requester has asked the head to do so as part of a request for subsection 12(1) records.

In the present case, the Commissioner stated that the head had considered whether Cabinet consent should be sought and exercised his discretion against doing so. The Commissioner found nothing improper or inappropriate with this exercise of discretion by the head.

The final issue addressed by the Commissioner was whether the severability requirements of subsection 10(2) applied to the record in question.

The Commissioner indicated that he addressed the broad issue of the application of severance to records in his Order in Appeal No. 880006. In that Order, he stated that the key question raised by subsection 10(2) was one of reasonableness. After having reviewed the record at issue in this appeal, the Commissioner concluded that no information that was in any way responsive to the request could be severed from the document without disclosing information that legitimately fell within the exemption.

In conclusion, the Commissioner stated that in enacting the *Act*, the Legislature acknowledged the need for all government records to fall within the purview of the *Act*. The Commissioner noted that this was not the case



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in many jurisdictions, including our own Canadian federal system, where Cabinet records are explicitly excluded from coverage and are not reviewable by the federal Information Commissioner.

The Commissioner stated that as an independent officer of the Legislature, he is not bound to accept an institution's decision that a record qualifies for an exemption. He stated that, unlike other jurisdictions, the *Act* gives him the mandate to obtain and review the records, as well as the responsibility, to exercise his judgment in each appeal.

**Order No. 23**  
**Appeal Nos. 880020, 880035,**  
**880066 and 880242**  
(October 21, 1988)

The appellants applied to the Ministry of Revenue requesting access to the estimated 1984 market values of all properties in Metropolitan Toronto on a property-by-property basis, including the municipal address of each property. The Ministry denied access to the record pursuant to subsection 21(1) of the *Freedom of Information and Protection of Privacy Act, 1987*. In addition, the Ministry asserted that subsection 57(1) of the *Assessment Act* contained a "confidentiality provision" which precluded the release of the requested information.

The Commissioner ordered that the Ministry disclose the requested information to the appellants.

In making this determination, the Commissioner first addressed whether subsection 57(1) of the *Assessment Act* was a "confidentiality provision" as

contemplated by section 67 of the *Freedom of Information and Protection of Privacy Act, 1987*. The Commissioner stated that the language of subsection 57(1) of the *Assessment Act* clearly stipulated that certain types of information were to be protected from disclosure and as such, found that in the circumstances of this appeal, subsection 57(1) of the *Assessment Act* was a "confidentiality provision".

The second issue addressed by the Commissioner was whether the information requested by the appellants fell within the scope of the "confidentiality provision".

The Commissioner determined that subsection 57(1) did not make all information collected in relation to assessment confidential in all circumstances. The Commissioner stated that subsection 57(1) did not prohibit the release of information otherwise made available to the public under the *Assessment Act*. The Commissioner referred specifically to the municipal address of a property and its market value, which is presently publicly accessible information and is required to be entered on the assessment roll in accordance with subsection 13(1) of the *Assessment Act*. The assessment roll is accessible by the public at the office of the clerk of the municipality.

The Commissioner concluded that the subsection 57(1) "confidentiality provision" was not intended to extend to the types of information that are required to appear on an assessment roll. As such, the Commissioner found that neither the municipal addresses nor the estimated 1984 market values fell within the scope of the "confidentiality provision" contained in subsection 57(1).

The third issue addressed by the Commissioner was whether the informa-

tion contained in the record was personal information as defined in subsection 2(1) of the *Freedom of Information and Protection of Privacy Act, 1987*.

The Commissioner stated that the municipal address of a property is a description identifying the location of the property in a municipality. In most cases, the name of the street and the number of the property are affixed at locations on the street, and the property is clearly visible to the public.

The Commissioner found that the municipal location of a property could not automatically be equated with the address of its owner, notwithstanding the fact that many individuals do reside in the properties they own. The Commissioner concluded that the municipal addresses requested by the appellants did not qualify as "personal information" under subsection 2(1)(d) of the *Act*.

The Commissioner acknowledged that in considering whether or not the municipal addresses and the estimated 1984 market values qualified as "personal information", he must also consider the introductory wording of subsection 2(1) of the *Act* which defines "personal information" as "...any recorded information about an identifiable individual ...". The Commissioner stated that the operative word in this definition is "about". The Commissioner determined that the municipal location of a property and its estimated market value was not information about an identifiable individual.

The Commissioner's finding that the information contained in the record was not "personal information" as defined in subsection 2(1) of the *Act* disposed of the appeals.

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**Order No. 24**  
**Appeal No. 880006**  
(October 21, 1988)

The appellant applied to the Ministry of the Attorney General requesting access to files on policies, practices, proposals and reports on "whistleblowers". The appellant requested that the Ministry provide these records for viewing in Ottawa as they became available.

Working documents for a policy submission to Cabinet on "whistleblowers" in the public sector were denied under subsection 12(1)(b) of the *Act*. A briefing note to the Attorney General on the status of policy development on the subject was denied under subsection 12(1)(e) of the *Act*. Notes and interoffice memoranda used in preparing the working documents and briefing note were denied under subsection 13(1) of the *Act*.

The first issue addressed by the Commissioner was whether certain of the records in question fell within the subsection 13(1) exemption. After reviewing the records, the Commissioner found that the records fell within the scope of the subsection 13(1) exemption.

It could be argued that the wording of subsection 13(2) might be read as requiring the disclosure of a record in its entirety if a determination was made that it contained any of the categories of information identified under the subsection, notwithstanding that the record also contained advice and recommendations as defined under subsection 13(1). The Commissioner did not accept this interpretation and stated that in such situations, the head should consider whether or not the record could reasonably be severed under

subsection 10(2) and the subsection 13(2) information disclosed.

The Commissioner found that the factual information in the records in this appeal was interwoven with advice and recommendations and could not reasonably be considered a separate and distinct body of fact. As such, it did not meet the criteria of "factual material" under subsection 13(2)(a), and the mandatory exception provided by that subsection did not apply.

The next issue addressed by the Commissioner was whether certain of the records in question fell within subsections 12(1)(b) and 12(1)(e) of the *Act*. After reviewing the contents of the records in question, the Commissioner was satisfied that they came within the mandatory exemptions provided by subsections 12(1)(b) and (12)(1)(e).

The next issue addressed by the Commissioner was whether the head had a duty under subsection 12(2)(b) of the *Act* to seek the consent of the Executive Council before denying access to a record when an exemption was claimed under subsection 12(1).

The Commissioner concluded that the *Act* did not impose an absolute requirement on the head to seek the consent of the Cabinet in all cases where an exemption under subsection 12(1) was claimed by an institution. However, in all cases, it is incumbent on the head to be mindful of the option available under subsection 12(2)(b) and to direct his or her mind to whether or not consent of the Cabinet should be sought. The Commissioner indicated that he was also of the view that the discretion of the head to seek consent must be exercised irrespective of whether the requester has asked the head to do so as part of the request for subsection 12(1) records.

In the present case, the Commissioner indicated that the head had considered whether Cabinet consent should be sought and exercised his discretion against doing so. The Commissioner found nothing improper or inappropriate with the exercise of this discretion by the head.

The next issue addressed by the Commissioner was whether the severability requirements of subsection 10(2) applied to the records in question.

The Commissioner stated that the key question raised by subsection 10(2) was one of reasonableness. The Commissioner stated that a valid subsection 10(2) severance must provide the requester with information that is in any way responsive to the request, while at the same time protecting the confidentiality of the portions of the record covered by the exemption.

After reviewing the records at issue in this appeal, the Commissioner concluded that no information that was in any way responsive to the request could be severed from the documents and provided to the requester without disclosing information that fell within the subsections 12(1)(b), 12(1)(e) and 13(1) exemptions.

The final issue addressed by the Commissioner was whether there was a compelling public interest in disclosure of the records exempted under subsection 13(1) that clearly outweighed the purpose of the exemption, as provided by section 23 of the *Act*. Section 12 is not included in the list of sections to which section 23 applies.

The Commissioner stated that two requirements must be satisfied in order to invoke the application of the so-called "public interest override"; there must be a compelling public interest in disclosure; and this compelling public



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interest must clearly outweigh the purpose of the exemption, as distinct from the value of disclosure of the particular record in question.

Although the Commissioner acknowledged that there could be a public interest in the issue of "whistleblowing", he was not convinced that this interest was "compelling", nor did he accept that the release of the records in question would or could clearly outweigh the purpose behind the section 13 exemption created by the *Act*.

In conclusion, the Commissioner stated that in enacting the *Act*, the Legislature acknowledged the need for all government records to fall within the purview of the *Act*. The Commissioner noted that this was not the case in many jurisdictions, including our own Canadian federal system, where Cabinet records are explicitly excluded from coverage and are not reviewable by the federal Information Commissioner.

The Commissioner stated that as an independent officer of the Legislature, he is not bound to accept an institution's decision that a record qualifies for an exemption. He stated that, unlike other jurisdictions, the *Act* gives him the mandate, as well as the responsibility, to exercise his judgment in each appeal.

## **Order No. 25**

### **Appeal No. 880174**

(October 24, 1988)

The appellant applied to the Ontario Labour Relations Board requesting access to the written reports of a conciliation officer for two meetings. The Board advised the requester that reports of labour relations officers were exempt from disclosure under subsection 111(6) of the *Labour Relations Act*. The Board further advised that since this "confidentiality provision" prevailed over the *Freedom of Information and Protection of Privacy Act*, 1987, the reports could not be released.

The Commissioner upheld the decision of the Board to deny access to the records in question.

The Commissioner noted that the issues raised by this appeal were identical to those raised by Appeal No. 880028. Given that the nature of the records requested, the Board's decision and the written representations of the Board to the Commissioner in regard to this appeal were virtually identical to Appeal No. 880028, and that the representations of the appellant raised no issues or arguments that were not fully addressed in that previous appeal, the disposition of the issues raised by this appeal was the same as in Appeal No. 880028.

The Commissioner found that in the circumstances of this appeal, subsection 111(6) of the *Labour Relations Act* operated as a "confidentiality provision" barring the application of the *Freedom of Information and Protection of Privacy Act*, 1987, in respect of the information requested.

The Commissioner reiterated that subsection 111(6) of the *Labour Relations Act* contained a discretionary power that had been accorded to the

Board to disclose information obtained by a labour relations officer, as well as the report of a labour relations officer. As this particular "confidentiality provision" barred the application of the *Freedom of Information and Protection of Privacy Act*, 1987 until January 1, 1990, the Commissioner encouraged the institution to suggest to Boards to consider the release of information such as a report of a labour relations officer to those involved in the case.

## **Order No. 26**

### **Appeal No. 880036**

(November 2, 1988)

The appellant applied to the Ministry of Labour requesting access to all records filed by union trust funds with the Minister in 1986 and 1987 as required by subsection 86(2) of the Ontario *Labour Relations Act*. He also requested that his request be treated as a continuing request for a period of 2 years pursuant to subsection 24(3) of the *Freedom of Information and Protection of Privacy Act*, 1987.

The ministry advised the trust funds which had filed the requested information that a request for the information had been received. The trust funds were invited to provide submissions to the ministry with respect to the issue of disclosure of the requested information.

The ministry advised the appellant that access to the requested records was denied because section 86 of the *Labour Relations Act* operated as an implied "confidentiality provision" barring the application of the *Freedom of Information and Protection of Privacy Act*, 1987.

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The issue addressed by the Commissioner was whether section 86 of the *Labour Relations Act* was a "confidentiality provision" for the purposes of section 67 of the *Freedom of Information and Protection of Privacy Act, 1987*.

The Commissioner noted that the term "confidentiality provision" was not defined in the *Act*. He stated that he had been given the opportunity to formulate a definition which would promote the policies promulgated in the *Act*. The Commissioner indicated that it would be contrary to the general intent of the legislation to narrow unnecessarily the circumstances in which the *Act* applied.

The Commissioner stated that the use of the term "confidentiality provision" in section 67 of the *Act* contemplated language specifically providing for confidentiality and non-disclosure of information. The Commissioner was of the opinion that such a confidentiality provision must include express language by which the disclosure of certain information was clearly prohibited.

The Commissioner stated that section 86 of the *Labour Relations Act* created a repository within the ministry respecting certain audited financial statements. Nowhere in the section was the Minister directed to or precluded from taking any particular action with respect to the financial statements once they were filed. In addition, the Commissioner stated that the provision in question was completely silent with respect to confidentiality. The Commissioner also noted that the section specifically provided for a right of access to certain individuals who were free to disseminate the records in question to whomever they chose. The Commissioner found that section 86 of the *Labour Relations Act* was not a

"confidentiality provision" for the purposes of section 67 of the *Freedom of Information and Protection of Privacy Act, 1987*.

Since the Commissioner concluded that section 86 did not qualify as a "confidentiality provision", he remitted the matter to the head so that the head could consider the appellant's access request within the framework of the *Freedom of Information and Protection of Privacy Act, 1987*.

## **Order No. 27**

### **Appeal No. 880059**

(November 2, 1988)

This appeal arose as a result of a request made to the Ministry of Labour for access to all records filed by union trust funds with the Minister in 1986 and 1987 as required by subsection 86(2) of the *Ontario Labour Relations Act*. The trust funds were invited by the ministry to provide submissions with respect to the issue of disclosure.

Many of the trust funds retained the appellant, who is a lawyer, to represent them. In order to make submissions on behalf of his clients, the appellant sought to determine the identity of the person(s) requesting access to the records filed by the union trust-funds. The Ministry denied access to the name of the requester claiming that it was personal information pursuant to subsection 21(1) of the *Freedom of Information and Protection of Privacy Act, 1987*.

The Commissioner ordered that the Ministry disclose the name of the requester to the appellant.

As a preliminary matter, the Ministry argued that the *Act* provided a complete code of procedure and, because there was no stated obligation on the Ministry to disclose the name of a requester, the principles of natural justice were not breached by the failure to do so.

The Commissioner did not accept this argument. He stated that while it was true that various provisions of the *Act* set out procedures to be followed by ministries in dealing with requests for information, the *Act* did not address every aspect of procedure. The Commissioner concluded that this silence should not be interpreted as creating a prohibition.

The Commissioner stated the decision as to whether the name of a requester will be disclosed should be governed by the substantive provisions of the *Act* relating to the disclosure of information. The Commissioner stressed that each case must be considered on its facts, and that the decision whether or not to release a requester's name would vary from case to case depending on the circumstances of each appeal.

The next issue addressed by the Commissioner was whether the name of the original requester was "personal information" as defined in subsection 2(1) of the *Act*. The Commissioner stated that if the record at issue contained only the name of an individual, it could not be considered "personal information" as a name alone could not be considered "recorded information about an identifiable individual".

The Commissioner stated that, in this case, the name did not appear alone, but in the context of a request for information. The Commissioner concluded that this rendered the name of



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the requester "personal information" as defined by the *Act*.

The final issue addressed by the Commissioner was whether disclosure of the name of the original requester would constitute an unjustified invasion of personal privacy under section 21 of the *Act*.

In referring to subsection 21(2)(a), the ministry submitted that disclosure of a requester's name would discourage people from requesting records under the *Act*. The Commissioner stated that in the absence of some empirical evidence to support this view, he could not accept that the public would refrain from applying for information from the government simply because there was a possibility that their names would be disclosed to someone else who had an interest in or was affected by the request.

The appellant invoked the concepts of natural justice and procedural fairness in making an argument that knowledge of the requester's name was necessary and relevant to a fair determination of his client's rights pursuant to subsection 21(2)(d) of the *Act*. Related Appeal No. 880036 addresses the issue of disclosure of the records referred to in this appeal. The Commissioner noted that to date the ministry had not been required to respond to the request for information in that appeal and only a preliminary issue involving the application of a "confidentiality provision" was being considered.

The Ministry also raised the possible application of subsection 21(2)(e) on the basis that since the ministry holds information pertaining to employers and employees, it was concerned that employees seeking information may be vulnerable to sanction from employers.

The Commissioner accepted the Ministry's argument that the disclosure of the name of a requester might, in some instances, cause difficulty to the requester. However, he was unwilling to impose a blanket rule of non-disclosure based on that reason. The Commissioner was satisfied that subsections 21(2)(e), (f) and (i) adequately addressed this possibility, and permitted the refusal to disclose a requester's name in appropriate circumstances.

The Ministry raised an argument concerning any expectations of confidentiality on the part of the original requester. The Commissioner indicated that neither of the request for information forms (Forms 1 and 2, Ontario Regulation 532/87 as amended) contained any provision indicating that the name of the requester would be held in confidence. The Commissioner acknowledged that in this case the original requester made his request by letter so, presumably, did not see an official form. However, his letter did not request that the information therein be kept confidential.

The Ministry advised the Commissioner that the original requester, after filing his request, indicated that he did not wish his name to be divulged to the appellant but, when notified of this appeal and given an opportunity to provide written submissions, he declined to do so.

The Commissioner concluded that disclosure of the original requester's name, in the circumstances of this appeal, would not result in an unjustified invasion of the requester's privacy.

## **Order No. 28**

### **Appeal No. 880317**

(December 6, 1988)

The Ministry of Correctional Services received a letter from the appellant seeking access to 60 different records. The appellant asked that each request be considered separately and processed individually. Pursuant to section 27 of the *Freedom of Information and Protection of Privacy Act, 1987* the ministry extended the 30 day limit for responding to a request. The appellant appealed the Ministry's decision with respect to the time extension.

In reviewing the extension of the time limit under subsection 27(1) of the *Act*, the Commissioner confined his inquiry to establishing whether the extension was reasonable in the circumstances.

In this case, the Ministry indicated that it had responded to 47 of the 60 requests initiated by the appellant. The remaining 13 requests consisted of two requests for general records and 11 requests for the appellant's own personal information.

With respect to the two requests for general information, the Commissioner was satisfied, after reviewing the ministry's submissions, that consultations were necessary and that an extension of 30 days to permit consultations was reasonable in the circumstances.

With respect to the eleven personal information requests, the Ministry indicated that the reason for an extension was that, taken together, the request involved over 3500 pages of records.

The Commissioner stated that in invoking section 27 of the *Act*, a head must address him or herself to whether

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any particular request involved a large number of records or required consultations that could not reasonably be completed within the 30 day time limit. The Commissioner stated that section 27 did not lend itself to the interpretation that it was properly triggered where the response was to a number of separate requests by the same individual, collectively, involving a large number of records or necessitating consultation.

The Commissioner concluded that the Ministry's approach was incorrect in that it did not consider each request separately and decide whether each individual request was for a sufficiently large number of records so as to justify a section 27 time extension. However, as the Commissioner was satisfied that the Freedom of Information Co-ordinator was acting in good faith, and since she had undertaken to supply the appellant with a response to his request by November 25, 1988, it was not necessary for the Commissioner to make an order in respect of this matter.

## **Order No. 29**

### **Appeal No. 880079**

(December 15, 1988)

The appellant requested copies of all information related to him contained in the Ministry of Health personal information banks. The appellant requested that this information be sent to him by mail. The Ministry notified the appellant that access to the requested records would be granted. The Ministry further advised that it was its practice to disclose personal information to the individual in person in order to protect the individual's privacy and maintain confidentiality. The Ministry requested that the appellant phone

its offices to make arrangements for pick-up of his records from the Ministry offices or another government office near his home. The Ministry further required that the appellant provide photo identification and sign a release form.

The appellant objected to being asked to come to the Ministry's offices to pick up the requested records and appealed the decision that required him to travel to Oshawa in order to receive access to the requested records.

During the mediation stage of the appeal, arrangements were made by the Ministry for the records to be available for pick-up by the appellant at the Port Hope office of another ministry. The appellant still objected to having to show photo identification and indicated that he had no such identification.

The Ministry agreed not to insist on photo identification but still required the personal attendance of the appellant with some other form of identification. This arrangement was not acceptable to the appellant who insisted on receiving the records by mail.

The Commissioner ordered that the Ministry send the personal information requested to the appellant by ordinary mail.

The Commissioner examined whether personal attendance and verification of the identity of the requester, prior to the release of personal information, were reasonable requirements imposed by the Ministry.

The Commissioner acknowledged that in order to protect the privacy of the individual to whom the information related, the Ministry must take steps to ensure, as best as it reasonably can, that the requester is the person whom

he or she purports to be. The Ministry must then provide access to the personal information in a manner which is not unnecessarily restrictive.

The Commissioner, in his general remarks, acknowledged that the responsibility for verifying the identity of the requester of personal information can be fulfilled using more than one technique. An institution is in the best position to determine, on a case-by-case basis, what it will take to satisfy itself as to the requester's identity.

The Commissioner suggested that an obvious preliminary step involved comparing identifying information on the request form itself with the information that is in the institution's possession. The Commissioner recommended that at least one additional step in verifying the identity of the requester was appropriate. The example the Commissioner put forward was questioning a requester on unique personal information contained in the record itself.

The Commissioner acknowledged that one of the most reliable ways to verify the identity of a requester was to require his or her personal attendance and the presentation of some document of identification. However, the Commissioner stated his concern that this method may be an overly restrictive requirement that would place barriers on an individual's right to access. As such, the Commissioner concluded that personal attendance should not be the standard form of verification used by an institution.

The Commissioner stated that once the institution had satisfactorily verified the identity of the requester, the manner by which the personal information was actually provided to the requester should be at the requester's option. The Commissioner recom-



mended that the request form itself be amended to provide options to a requester with respect to manner of delivery. These options range from ordinary mail, to personal attendance. The Commissioner stated that in all cases, the inconvenience to the requester imported a corresponding benefit in terms of the security of the information and the consequent protection of the requester's privacy.

In the circumstances of this appeal, the appellant refused to consider any method of delivery of his personal information other than by ordinary mail. As such, the Commissioner concluded that it would be appropriate for the Ministry to send the information to the appellant in the manner requested by him.

### **Order No. 30** **Appeal No. 880072** (December 21, 1988)

The appellant applied to the Ministry of Financial Institutions for access to a copy of a statement filed with the Ontario Securities Commission by the Ontario District Council of the Investment Dealers Association of Canada. This statement was made as part of an investigation conducted by the Investment Dealers Association into a complaint by the appellant to the Ontario Securities Commission regarding the activities of an investment dealer.

The Ministry denied access to this statement claiming that the Investment Dealers Association qualified as an agency described in subsection 14 (2)(a) of the *Act* and that the statement fell within that exemption.

The Commissioner upheld the decision of the Ministry and dismissed the appeal. In coming to this conclusion, the Commissioner first addressed the issue of whether the Investment Dealers Association was an agency under subsection 14 (2)(a) of the *Act*.

After setting out the relationship between the Ontario Securities Commission and the Investment Dealers Association, the Commissioner concluded that the Investment Dealers Association was acting as an agent for the Ontario Securities Commission and as a result the statement in question fell squarely within the parameters of subsection 14 (2)(a) of the *Act*.

The second issue addressed by the Commissioner was whether the head properly exercised his discretion with respect to the release of the statement for which the exemption was claimed. The Commissioner acknowledged that section 14 of the *Act* gives the head the power to exercise his discretion to disclose a record and as the Commissioner found nothing improper or inappropriate with the exercise of this discretion, the Commissioner did not alter this decision on appeal.

The final issue addressed by the Commissioner was whether the severability requirements of subsection 10 (2) of the *Act* applied to the record in question. The Commissioner reiterated that the key question raised by this subsection was one of reasonableness. In this case the Commissioner's review of the record resulted in the conclusion that no information that was in any way responsive to the request could be severed from the report and provided to the requester without disclosing information that fell within the exemption contained in subsection 14 (2)(a) of the *Act*.

### **Order No. 31** **Appeal No. 880015** (December 21, 1988)

The appellant applied to the Ministry of Financial Institutions for access, on a computer disc, to copies of two forms for pension plans registered in Ontario with over 100 members.

The Ministry provided the requester with a fee estimate of \$21,000 for the requested records and an explanation that access could not be provided in the format requested as the Pension Commission of Ontario was currently replacing its computer system and it would likely be 18 months before it could produce an accurate computerized listing in answer to the request. However, the institution advised that the information could be provided manually and provided the appellant with a break-down of the estimated cost. The appellant appealed this fee estimate.

During the course of mediation the institution reduced its fee estimate to \$18,400.

The Commissioner addressed the issue of whether the head exercised his discretion under subsection 57 (1) of the *Act* not to charge a fee as well as to charge a fee. On reviewing the institution's representations, the Commissioner concluded that the head had properly exercised his discretion under the subsection and his decision should not be disturbed on appeal.

The second issue addressed by the Commissioner was whether the head had a duty to consider the application of subsection 57 (3) of the *Act* without any of the specific considerations enumerated thereunder being raised by the appellant.

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The Commissioner reiterated his statement first made in his Order in Appeal No. 880009 released July 18, 1988 that the *Act* does not require a request for fee waiver to be explicit or in writing. However, the Commissioner stated that subsection 57(3) did require the requester to provide adequate evidence to support a claim for a fee waiver. In this appeal, the absence of submissions from the appellant on this issue supported the Commissioner's determination that there was no basis to justify a fee waiver.

The next issue addressed by the Commissioner was whether the amount of the estimated fees were properly calculated. Upon reviewing the relevant factors, including the permissible fees to be charged by regulation, the Commissioner determined that the fee estimate had been properly calculated.

The final issue addressed by the Commissioner was whether the head's decision that access to the records could not be provided for 8-10 months was reasonable. While the Commissioner stated that it would have been preferable for the head to have specifically cited subsection 27 (1)(a) as the basis for his decision and that a specific time be determined, the Commissioner concluded that the plan of the institution and the estimated time period was reasonable. The Commissioner stated that although the response to the request would take 8-10 months to process manually, this factor, in and of itself, did not lead to the conclusion that the institution had acted unreasonably.

Accordingly, the Commissioner upheld the decision of the head and dismissed the appeal.

### **Order No. 32 Appeal 880112 (December 21, 1988)**

The appellant applied to the Ministry of Labour for access to all reports and recommendations with respect to a collapsed dome belonging to Harvex Elevators in Oxford Township, Ontario. The Ministry denied access to the records stating that subsection 34 (1)(a) of the *Occupational Health and Safety Act* prohibited disclosure as it was a "confidentiality provision" for the purposes of section 67 of the *Freedom of Information and Protection of Privacy Act, 1987*.

The Commissioner first addressed the issue of whether subsection 34 (1)(a) of the *Occupational Health and Safety Act* was a "confidentiality provision" for the purposes of section 67 of the *Freedom of Information and Protection of Privacy Act, 1987*.

After reviewing previous orders and the statutory provision itself, the Commissioner found that the subsection was such a "confidentiality provision".

The second issue addressed by the Commissioner was whether the records in question fell within the scope of the "confidentiality provision" relied on. Upon reviewing the records in question, the Commissioner was satisfied that the records fell within the scope of the "confidentiality provision" relied on by the Ministry.

The Commissioner noted further that subsection 34 (3) of the *Occupational Health and Safety Act* granted a discretionary power to a Director, authorizing him or her to disclose "information, material, statements or the result of a test acquired, furnished, obtained, made or received under this Act or the regulations". The Commissioner stated

that in the circumstances of this appeal, it was not clear whether a Director had in fact exercised the discretion provided under subsection 34 (3) of the *Occupational Health and Safety Act*. Accordingly, the Commissioner ordered that a Director reconsider the request of the appellant in the context of that subsection.

### **Order No. 33 Appeal No. 880053 (December 28, 1988)**

The appellant applied to the Ministry of the Solicitor General for all records relating to exchanges concerning him made between the ministry (including the Ontario Provincial Police) and the Department of Social Services, Northumberland County. The ministry advised the appellant that it could not provide access to the requested records as the records did not exist.

The appellant reiterated his request providing further detail. The Ministry treated this as a new request because it provided more information and specifics. However, the Ministry again advised the appellant that records did not exist in response to his second request. The appellant appealed this decision.

The Commissioner dismissed the appeal. In doing so, the Commissioner determined that while the Ministry may not have completely fulfilled its responsibilities pursuant to subsection 48(2) of the *Act* in its first attempt to answer the request, it did discharge its responsibilities relating to the second request.

The Commissioner determined that the statutory provisions relating to a



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request for personal information place the responsibility for ascertaining the nature or whereabouts of a record of personal information on both the requester and the ministry. While some obligation is placed on the requester to provide as much direction as possible, the Commissioner acknowledged that a requester's knowledge as to what records are in the custody or control of a ministry will vary.

The Commissioner also acknowledged the danger that, due to a lack of knowledge on the part of a requester, a record that would respond to his or her request may not be considered for release because it had not been identified by the requester with sufficient precision. The Commissioner stated that the situation which arose in this case, where the request was for "all" information relating to the appellant, was one example where there was the potential to frustrate the right of access provided for in the *Act* because a request for "all" information may not be sufficiently descriptive for the purposes of subsection 48(1).

In the circumstances of this appeal, the Commissioner found that while the appellant attempted to identify the location of the personal information at issue, the request did not contain sufficient identifying information. Rather than asking for more details as to the area of search, the Ministry unilaterally decided to limit its search. Based on this limited search, the appellant was advised that no records existed. However, the appellant was not advised as to the extent of the search conducted by the Ministry.

Since the appellant was not satisfied with the Ministry's response to his original request, he provided further unsolicited details to the institution that precipitated another, wider search by the Ministry.

After reviewing the Ministry's submissions with regard to the extent of the second search, the Commissioner was satisfied that the Ministry had taken reasonable steps to locate records responding to the appellant's request.

### **Order No. 34** **Appeal No. 880067** (December 28, 1988)

The appellant applied to the Ministry of Community and Social Services for all records from every file containing information about himself which the ministry or any agency for which the ministry is responsible had in its possession. The appellant indicated his desire to receive these records by mail.

The Freedom of Information Co-ordinator for the ministry forwarded all records responding to the appellant's request to the appellant by courier. The Co-ordinator subsequently informed the appellant that the records which had been sent to the appellant had been returned to the Ministry because the courier service could not deliver to the address which had been given by the appellant. The Co-ordinator requested another address from the appellant so that delivery by courier could be effected. The appellant refused to give another address or to pick up the material at a government office near his home and reiterated his desire that the records be sent by mail. The Ministry complied with this request.

Subsequently, the Co-ordinator received a letter from the appellant which included several torn-up copies of documents in English which the ministry had sent to the appellant. In this

letter, the appellant noted that the Ministry had failed to send him a number of documents and the appellant provided a partial list of documents, letters and files that he suggested were missing. In addition, the appellant requested copies of regulations concerning retention and destruction of records.

The appellant appealed the response of the Ministry, stating that the ministry had not sent all the information pertaining to him and had also deliberately delayed its partial reply to his request.

In dismissing the appeal, the Commissioner stated his satisfaction that the ministry had complied with the provisions of the *Act*. In coming to this conclusion, the Commissioner first addressed whether the Ministry had made reasonable efforts to identify and locate the personal information requested by the appellant.

The Commissioner stated that a ministry will, usually, be in a better position than a requester to know what records are within its custody or control. The Commissioner acknowledged, however, that a requester may well have some knowledge as to the whereabouts of a record of personal information that pertains to him or her.

The Commissioner stated that sections 47 and 48 of the *Act* place the responsibility for ascertaining the nature or whereabouts of a record of personal information on both the requester and the ministry.

As noted above, the appellant claimed that many more letters and documents existed concerning him. He provided a list of such letters and stated that he had proof that they existed. However, although he was specifically asked by the Commissioner's office to provide such proof, he did not do so.



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The Commissioner was satisfied with the steps taken by the Ministry to identify and locate the personal information and records requested by the appellant as outlined in its representations.

The second issue addressed by the Commissioner was whether the delay by the Ministry in responding to the request was reasonable in the circumstances.

The initial delay in sending the records to the appellant was due to the fact that delivery by courier could not be made to a post office box. The Commissioner found that this problem was quickly remedied and therefore no undue delay existed.

The Commissioner acknowledged that the second cause of delay with respect to the reiterated request arose from the fact that the Ministry had not consulted with the appellant for clarification or canvassed all of the decision-makers within the Ministry. The Commissioner found that this approach was unsatisfactory.

The Commissioner stated that the final cause of delay was the Ministry's uncertainty about whether the appellant's letter contained a new request or merely reiterated previous ones. The Commissioner noted that since translation was involved and the appellant's letters were of a lengthy nature, it was understandable that confusion arose as to whether the subsequent request constituted a new request for access. Accordingly, the Commissioner found that the delay incurred by the Ministry in responding to the request was not unreasonable.

## **Order No. 35**

### **Appeal No. 880092**

(December 28, 1988)

The appellant applied to the Ministry of the Solicitor General for copies of all data on file with the Minden Detachment of the Ontario Provincial Police dating back to 1984. By way of clarification, the appellant advised that he had reported numerous thefts, vandalism, trespass and unlawful hunting incidents to the Detachment over the years, none of which had been resolved.

The Ministry granted partial access to documents relating to the appellant's request. Certain personal information was severed from the records pursuant to section 21 of the *Act*. The appellant appealed the decision of the head, citing dissatisfaction with the severances, the content of the records, and the incompleteness of the records.

The Commissioner first addressed the issue of whether the Ministry had taken reasonable steps to locate the records. At the Commissioner's request, the Ministry outlined in affidavit form the steps taken by its officials to locate the records. The initial search produced a number of records which were forwarded to the appellant. In the later stages of the appeal, the Ministry located and released more records.

In his Orders No. 33 (Appeal No. 880053) and Order No. 34 (Appeal No. 880067), the Commissioner outlined his views on the responsibilities of both ministries and requesters when a request requires clarification. As he noted in those Orders, sections 47 and 48 of the *Act* place the responsibility for ascertaining the nature or whereabouts of a record of personal information on both the requester and the ministry.

In this case, the appellant was able to identify the records he requested with some precision so as to enable the ministry to search its files and, although the ministry could not locate all of the records in its custody or control at first instance, it did eventually locate further records when provided with more details. The Commissioner found that the search undertaken was reasonable under the *Act*.

The second issue addressed by the Commissioner was whether the Ministry's records retention procedures were in accordance with the *Act*. The Commissioner noted that the search undertaken by the Ministry produced certain records corresponding to some but not all of the appellant's "older" complaints that were still on file beyond the date when, according to the ministry's records retention schedule, they could or should have been destroyed. The appellant cited this inconsistency in records retention as his basis for believing that other records corresponding to his "older" complaints might still be in existence.

The Commissioner set out the Ministry's procedure with regard to location and retention of records. The Commissioner stated that while the system described was perhaps a cumbersome way of retrieving personal information, it was a reasonable response to the obligations imposed by the *Act*.

Discussions with the Ministry revealed that there were potential problems with the personal information banks maintained by the Ministry. To address his concerns with the Ministry's record-keeping, the Commissioner asked the Ministry to consult with its Director of Compliance in order to produce written guidelines for the maintenance of the Ministry's personal information banks and for the disposal of records according to both the Min-

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istry's own retention schedules and the terms of the *Act*. The Commissioner requested that the Ministry produce such written guidelines and provide him with a copy as soon as they are produced.

NOTE: Ontario Regulation 15/89 sets out considerations with respect to disposal of personal information by institutions.

### **Order No. 36** **Appeal No. 880030** (December 28, 1988)

The appellant applied to the Ministry of Industry, Trade and Technology requesting access "to a copy of the contract implementing Ontario's memorandum of understanding with General Motors and Suzuki for the establishment of an automotive assembly plant at Ingersoll, Ontario" (the record).

After receiving the appellant's request, the Ministry gave notice of the request to an affected person (third party), under section 28 of the *Freedom of Information and Protection of Privacy Act* (the *Act*) and received representations from the third party concerning disclosure.

The Ministry decided to disclose part of the record requested by the appellant and access to the balance of the record was denied under subsection 17(1) of the *Act*.

The appellant appealed the decision to deny access to part of the record.

During the mediation/investigation stage of the appeal the scope of the appeal was narrowed to the severed

information contained in Schedule "G" of the record.

The Commissioner ordered disclosure of Schedule "G" of the record in its entirety. He found that the Ministry and the third party had failed to satisfy the three-part test which must be met in order for the information to fall within the exemption in subsection 17(1) of the *Act*.

Although the Commissioner found that the first two parts of the section 17 test were not satisfied, i.e., the information was not of a technical, commercial or financial nature and was not "supplied" to the institution by the third party within the meaning of subsection 17(1), his decision was primarily based on the application of the third part of the test.

The Commissioner stated that in order to satisfy the third part of the section 17 test, the Ministry and/or third party must present evidence that is detailed and convincing and must describe a set of facts and circumstances that would lead to a reasonable expectation that the harm described in subsections 17(1)(a) to (c) would occur if the information was disclosed.

In this case, the Commissioner found that the evidence presented by the Ministry and the third party was insufficient to establish a reasonable expectation of harm resulting from the release of the severed information. In particular, he found it significant that a great deal of the information at issue in the appeal was revealed by the Ministry, to the public, in its News Release of August 27, 1986, announcing the joint venture.

## SELECTED SUMMARIES OF SETTLED CASES

The following is a selection of summaries of cases which were settled during the investigation and mediation stage, where no inquiry was conducted. These particular summaries have been chosen because we thought they would be of interest or value.

### Appeal No. 880068

The appellant applied to the Ontario Human Rights Commission requesting all documents relating to his case with the Commission. Access to the entire file was denied under subsection 14(1)(f) of the *Act*, as the appellant's case was under reconsideration.

In the course of an investigation, the appeals officer met with a representative of the Commission to review the file. After issuing an Appeals Officer's Report which invited written representations respecting the issues identified therein, the appeals officer was advised that the Commission had reconsidered its position. The Commission offered to release its file subject to the non-disclosure of a legal memorandum and the names of certain persons which the Commission obtained in the course of an investigation. After the appeals officer reviewed the matter with the appellant, the appellant accepted the Commission's offer of settlement and the appeal was resolved.

### Appeal No. 880165

The appellant applied to the Ministry of Municipal Affairs requesting "release of a report on industrial lead in Brantford commissioned by the municipality and conducted by the firm M.M. Dillon Ltd." The Ministry denied access to the report.

The appeal was settled when the City of Brantford publicly released the report.

### Appeal No. 880111

The appellant applied to the Ministry of Correctional Services requesting "separation document #1, original copy missing from personnel files:...[and the appellant requested to be told]... where original #1 copy has been filed, or where mentioned copy is now." The Ministry informed the appellant that the original of document #1 was forwarded to the Ministry of Government Services for processing. The appellant was also told that "the original Separation Notice... requested was destroyed by the Ministry of Government Services after three months, ...[therefore] no correction could be made to the record." As such, the request was denied.

The appeals officer contacted the Ministry of Government Services. The Supervisor, Support Services confirmed that the original document is kept three months, and then is microfilmed before the original is destroyed. The appeals officer informed the appellant that the original document had been microfilmed and that a copy would be made available to her on request. As a result, the appellant received a copy of her original document and the appeal was resolved.

### Appeal No. 880045

The appellant had applied to the Office of the Chief Election Officer for a copy of the voter's list for his polling division. The appellant was refused a copy of this list as the *Act* does not apply to the Office of the Chief Election Officer and release of the information in the list would violate privacy rights in any event.

The office of the Commissioner forwarded a letter to the appellant confirming that the *Act* did not apply to the Office of the Chief Election Officer and advising that his request had been transferred to the Archives of Ontario which now had custody of the voter's list. The office of the Commissioner also informed the appellant that the names and addresses he sought from the record were likely available at any branch of the Metropolitan Toronto Public Library through a privately compiled directory service.

After investigating, the Commissioner sent a letter to the appellant advising that his office did not have jurisdiction to make an order in this matter. The Commissioner informed the appellant that, pursuant to subsection 65(1) of the *Act*, records placed in the Archives of Ontario by or on behalf of any organization other than an "institution" are not subject to the *Act* and the Office of the Chief Election Officer is not an institution subject to the *Act*.



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### Appeal No. 880057

The appellant applied to the Ministry of the Attorney General, requesting a letter purportedly sent to the Official Guardian from the appellant's lawyer. The Ministry advised the appellant that access to the record could not be provided because the record did not exist.

The appeals officer reviewed the file, the entire contents of which had been disclosed to the appellant, and confirmed that the file did not contain the letter in question. The appeals officer enquired into the procedure for opening files and a file index card was produced. This card indicated that both the file opening date and the date of the first letter on file was subsequent to the date of the letter requested by the appellant. Permission was granted to release a copy of the file index card to the appellant. As a result of this investigation, the appellant indicated that he was satisfied that no record existed. The appellant had previously reviewed the lawyer's file and no letter was located.

### Appeal No. 880077

The appellant applied to Ontario Hydro requesting a complete copy of his medical file. The institution granted access to all medical records except a memorandum to file drafted by a doctor which was withheld pursuant to subsection 49(d) of the *Freedom of Information and Protection of Privacy Act*, 1987.

After extensive discussions between the Appeals Officer and the institution, the doctor's memorandum to file was released to the appellant.

### Appeal No. 880001

The appellant applied to the Ministry of the Environment requesting numerous reports, guidelines, polls, correspondence and minutes of meetings. The Ministry released a number of these records, some containing severances pursuant to sections 12, 13, 15, 17 and 21 of the *Act*. The appellant appealed with respect to the severances made to the Minutes of the Pesticides Advisory Committee.

The appeals officer attended meetings with officials of the Ministry of the Environment in which it was recommended that the Ministry review its response. The Ministry sent the appellant a revised copy of the minutes with significantly fewer severances. The appellant confirmed that the appeal was resolved.

### Appeal No. 880155

The appellant applied to the Ministry of Correctional Services requesting access to a report of the Operational Review Team at the Elgin-Middlesex Detention Centre. The head advised that the Operational Review Team had completed its field work at the Elgin-Middlesex Detention Centre in January 1988; the report, however, was not finalized. The head suggested that the appellant re-submit the request after the report was completed.

The institution agreed to treat the appellant's outstanding request as a "continuing" request within the meaning of subsection 24(3) of the *Freedom of Information and Protection of Privacy Act*, 1987 and agreed to advise the appellant of the anticipated time frame for producing the final report and responding to the request.

### Appeal No. 880073

The appellant applied to the Ministry of Transportation requesting records containing personal information. The Ministry gave access to the records requested with the exception of 4 pages which were withheld pursuant to section 177 of the *Highway Traffic Act*. The records not sent to the appellant consisted of his driving record, a memorandum of the medical review section, the case study of the medical advisory committee, and a photocopy of a decision on an application for a Class D Drivers License.

The appeals officer obtained the part of the records not sent to the Appellant and, after discussion with the F.O.I. Co-ordinator, the Ministry reassessed its position with respect to the release of all the records and decided to release all of the records to the appellant.

### Appeal No. 880098

The appellant applied to the Ministry of Transportation requesting "copies of all notes, reports, documents, memos, correspondence, records, letters and communications of any kind relating to Lonely Bay Estates..." The Ministry permitted access to the entire file except for 26 pages which were exempted under sections 13, 17 and 21 of the *Freedom of Information and Protection of Privacy Act*, 1987.

The appeals officer reviewed the severances with the Freedom of Information Co-ordinator and the head subsequently decided to release all remaining documents.

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## Appeal No. 880094

The appellant applied to the Ministry of Industry, Trade and Technology requesting "a copy of the IDEA Corp. portfolio review prepared by Mr. Jack Bidell". The Ministry denied access to this report under subsection 13(1) of the *Act* stating that "disclosure would reveal advice or recommendations of a consultant retained by an institution". As well, the Ministry cited subsections 14(1)(a), (b), (f) and 18(1)(c) of the *Act* on the basis of an ongoing police investigation and because disclosure "could reasonably be expected to prejudice the economic interest of an institution".

Following an investigation and upon issuing an Appeals Officer's Report which invited written representations respecting the issues identified therein, the Commissioner was advised by the Ministry that it had reconsidered its position and decided to "release to the requester a copy of the record requested in its entirety".

## Appeal No. 880087

The appellant applied to the Ontario Human Rights Commission requesting copies of witness statements contained in her complaint file. The institution denied access claiming that subsection 14(1)(f) of the *Freedom of Information and Protection of Privacy Act, 1987* applied as the appellant's case was under reconsideration pursuant to section 36 of the *Human Rights Code, 1981*.

The Appeals Officer reviewed the applicability of section 14(1)(f) with the Freedom of Information Co-ordinator. The parties settled the appeal on the basis that the witness statements would be disclosed with the names of witnesses severed.

## Appeal No. 880090

The appellant applied to the Ministry of Health requesting access to a statement as to precisely what services her medical doctor had submitted charges for. The Ministry disclosed this information apparently with severances. A letter from the Ministry indicated that the information was subject to severance in accordance with section 44 of the *Health Insurance Act* which does not allow for the provision of either diagnosis or nature of treatment.

An issue also arose in this appeal with respect to the procedures of the Ministry with respect to pick-up of the records. Initially, the appellant herself was required to attend at the Ministry's office with photo ID before the Ministry would release the records. Finally, after the appellant wrote to the Ministry protesting what she felt to be unreasonable requirements, the Ministry advised that her husband could pick up the record if he produced her signed consent to do so.

The appellant appealed both the procedures to pick up the record and the severances the Ministry planned to make. In an attempt to effect settlement, the appeals officer clarified to the appellant that the severances indicated in the covering letter had, in fact, not been made. In addition, a problem with the quality of the record copy was explained to the Appellant.

The appellant suspects that one of the records she feels is missing from the file might be found in her OHIP records. The appeals officer requested the Ministry conduct a search in this area and provide the appellant with a response in writing as to the results of this search. The appeals officer has not been notified as to the result of the search.

## Appeal No. 880040

The appellant applied to the Ministry of Education requesting access to a report received by the Ministry in late 1985 or early 1986 concerning a complaint by the appellant to the Ministry about the Sault Ste. Marie Board of Education. The Ministry files were reviewed but the report requested was not located. The appellant was advised that she could not be given access "because the record does not exist".

At the suggestion of the appeals officer, the Ministry agreed to give the appellant access to the documents obtained in the search of Ministry files. The appellant has examined the documents and has received copies of several contained in the file. The appellant has indicated that there is nothing more that the Office of the Commissioner can do for her and that her appeal has been resolved.

## Appeal No. 880182

The appellant applied to the Ministry of Agriculture and Food requesting a list of dairy processing companies identified by inspectors as having problems which persisted from one inspection to the next. The request included names, locations, nature of problems and the period over which they existed. The Ministry informed the appellant that a list of this information did not exist.

After extensive discussions between the Appeals Officer, the appellant and the Ministry, the Ministry agreed to provide the appellant with notice of each hearing conducted to consider the license status of a dairy processing plant. The appellant was satisfied and confirmed that the appeal was resolved.



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## Appeal No. 880004

The Appellant applied to the Ministry of Industry, Trade and Technology requesting copies of reports, evaluations, studies and correspondence involving an investment by the IDEA Innovation Fund Inc. The Ministry responded indicating that the request affected the interests of third parties. These third parties were given an opportunity to make representations concerning the disclosure of the records. The Appellant was notified that a decision would be made with regard to disclosure in accordance with subsection 28(4) of the *Act*.

The Appellant appealed the decision of the Ministry to delay release of the records requested. The Appellant contended that subsection 28(4) of the *Act* did not apply because one of the third parties, a company, no longer existed as it had declared bankruptcy and its assets had been dispersed by the receiver. The Appellant further contended that with the dispersal of the company assets, the interests of the second third party, the receiver, would not be affected.

After discussing the matter with the FOI Co-ordinator, the Appeals Officer informed the Appellant first, that the company had not been dissolved, and secondly that the Ministry had sent notices to, among others, corporations which had purchased assets of the corporation that had gone into receivership. The Appellant indicated that he was satisfied with this reason for delay and the appeal was resolved.

## Appeal Nos. 880018 & 880019

The Appellant applied to the Ministry of Community and Social Services and to the Ministry of Consumer and Commercial Relations requesting "any and all information" on file pertaining to his birth and adoption. The Ministry of Community and Social Services informed the Appellant that the *Freedom of Information and Protection of Privacy Act, 1987* did not apply to information relating to adoptions.

The request to the Ministry of Consumer and Commercial Relations was sent to the office of the Registrar General. This office did not process it as a freedom of information request due to their understanding that the *Act* did not apply to a request for adoption information. The office of the Registrar General forwarded the request to the Adoption Disclosure Registry, Ministry of Community and Social Services. The Appellant received a second response from that Ministry stating that the *Act* did not apply to adoption information. A booklet was forwarded to the Appellant regarding the Adoption Disclosure Service which explained what type of information was available and how the Appellant could go about obtaining it.

The Commissioner informed the Appellant that he was unable to pursue the matter any further due to the fact that subsection 158a(5) of the *Child and Family Services Act, 1984* states that the *Freedom of Information and Protection of Privacy Act, 1987* does not apply to information relating to adoption. This subsection came into force on January 1, 1988.

## Appeal No. 880088

The appellant applied to the Ministry of Health requesting the minutes of meetings of the Healing Arts Radiation Protection Commission from 1986 until February 1988 in addition to any studies or reports that the Commission had undertaken. The Ministry disclosed the records with more than 20 severances under sections 18(g), 17, 13, 21, 19 and 12(f) of the *Freedom of Information and Protection of Privacy Act, 1987*.

The Appeals Officer requested that the Ministry reconsider its position with respect to the severances. The Freedom of Information Co-ordinator reduced the number of severances to four. One of the remaining severances was under section 21 and the other three were under section 19 of the *Act*. The appellant accepted this and confirmed that the appeal was resolved.

## Appeal No. 880205

The appellant applied to the Ministry of Health requesting statements made by staff and any other information relating to a specific incident. The Ministry refused access claiming that the records requested might interfere with a law enforcement matter or investigation pursuant to subsections 14(1)(a) and (b) of the *Freedom of Information and Protection of Privacy Act, 1987*.

The Ministry did not wish to disclose the witness statements until a pre-disciplinary hearing had taken place. A pre-disciplinary hearing was held and it was decided that no charges would be brought against the appellant. The Ministry released all records after the hearing. The appellant confirmed that the appeal was resolved.

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### Appeal No. 880258

The appellant, an employee of the Ministry, applied to the Ministry of Community and Social Services requesting access to his Human Resources records. The Ministry granted access to the records in full. However, the Ministry limited the amount of paid time in which the appellant was allowed to review his records. If further time was required by the appellant, he was asked to conduct the review on his own time.

In his letter of appeal, the appellant indicated that he was denied full and proper access to his files held by the Ministry. He also requested that all supervisory notes held by the Ministry be removed.

The appellant was advised by the Appeals Officer that the issue of whether the appellant should be allowed to conduct his review on Ministry or personal time was not an issue falling within the Commissioner's jurisdiction.

With respect to the removal of supervisory notes, the Appeals Officer advised the appellant to direct his request to the Ministry. Until such time as a decision was rendered by the Ministry, the Commissioner had no jurisdiction to entertain the appellant's appeal.

### Appeal No. 880228

The appellant applied to the Ministry of the Environment requesting information regarding a "control order" issued by the Ministry to a corporation. Among other records, the appellant specifically requested the reports as required in section 13 of the "control order" which outlined the progress made by the corporation towards complying with the order. The Ministry originally denied access under subsection 22(b) of the *Freedom of Information and Protection of Privacy Act, 1987* on the basis that the information requested would soon be published. Subsequently, subsections 17(1)(a) and 18(2) of the *Act* were relied upon.

As a result of the involvement of an Appeals Officer, the Ministry reviewed its earlier decision. The Ministry advised the corporation involved of its intention to release the requested records unless the corporation appealed this decision to release within 30 days. The corporation advised the Ministry that it did not intend to appeal the decision to release the records in question and the records were released.

### Appeal No. 880027

The Appellant applied to the Ministry of Labour requesting the Industrial Health and Safety Branch file relating to his former employer for the period of May 8, 1982 to January 1983. The Ministry forwarded a copy of the file with severances on one document pursuant to subsection 21(1) of the *Act*. The words severed identified an occupation which was mentioned three times. The Freedom of Information Co-ordinator explained that she severed this word because she thought that disclosure might enable someone to identify this person.

The Appeals Officer reviewed the document which contained the severances. Several attempts were made through letters and with the assistance of a translator to explain to the Appellant that the information he sought was not contained in the three words severed from the record. He eventually attended the Office of the Commissioner with a relative who assisted in translation. At that time, the appellant indicated that he understood the explanation given and that his appeal had been resolved.

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## Appeal No. 880184

The appellant, a retired employee of Ontario Hydro, applied to Ontario Hydro requesting his personnel file. The institution granted partial access severing certain portions of the records pursuant to subsection 49(1)(b) of the *Freedom of Information and Protection of Privacy Act, 1987* because there were references to retirement benefits of other retired workers.

In 1983, shortly after the appellant had retired, the file had been purged of all information other than that concerning ongoing pension benefits and insurance matters. The Appeals Officer explained to the appellant that there were no comments in his file about job performance or similar matters. The Appeals Officer described, in a general way, what had been severed and the appellant indicated that he was not concerned with these matters. The appellant confirmed that the appeal was resolved.

## Appeal No. 880208

The appellant applied to the Ministry of Health requesting personal records indicating medication received, procedures performed, conclusions drawn and all findings from five hospitals dating from 1970 to the present. The Ministry informed the appellant that this information was not contained in OHIP files. The appellant was informed by the Ministry that OHIP did have a diagnostic code for billing purposes but disclosure of this information was denied pursuant to section 44 of the *Health Care Accessibility Act* claiming that this section was a "confidentiality provision" under section 67 of the *Freedom of Information and Protection of Privacy Act, 1987*.

The Appeals Officer clarified the type of information which the appellant was seeking. The Freedom of Information Co-ordinator advised the appellant that this information would be

in the hospital records and/or treating physician's files. The appellant was advised to try to obtain this information from the hospitals or from his doctors. The Appeals Officer advised the appellant that neither of these entities fell within the Information and Privacy Commissioner's jurisdiction. The appellant was further advised that the Ministry could provide him with a list of dates he received service, the treating physician and the amount paid by OHIP. The appellant was content to receive whatever the Ministry could provide him. It was agreed that the Ministry would send the appellant a letter explaining the type of information they had and providing a personal information request form. The appellant confirmed that the appeal was resolved.







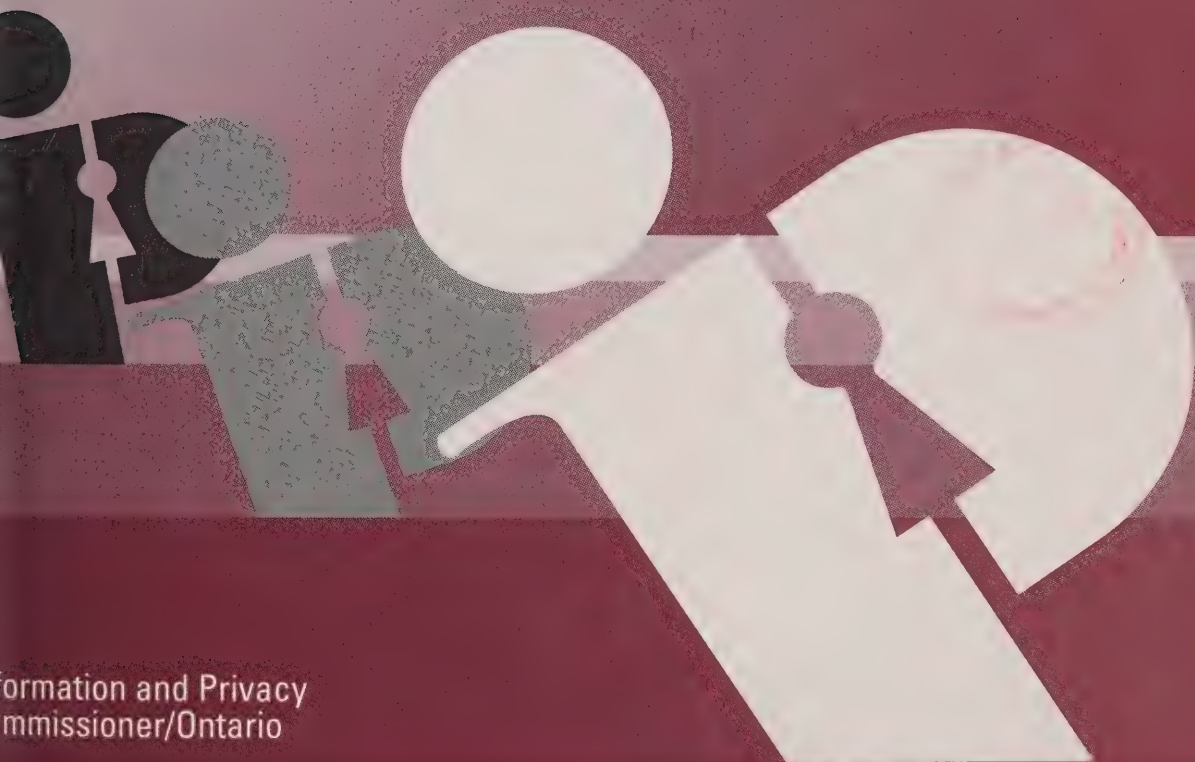






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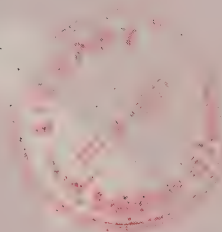
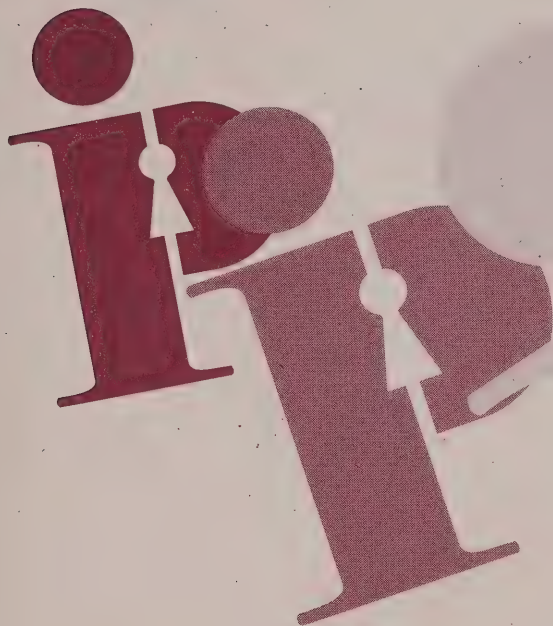




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INFORMATION AND PRIVACY  
COMMISSIONER/ONTARIO

# **ANNUAL REPORT 1989**



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Information and Privacy  
Commissioner/Ontario  
Commissaire à l'information  
et à la protection de la vie privée/Ontario

April 24, 1990

The Honourable Hugh Edighöffer, M.P.P.  
Speaker of the Legislative Assembly

Dear Sir:

Pursuant to Section 58 of the *Freedom of Information and Protection of Privacy Act*, 1987, I have the honour to present the Annual Report of the Information and Privacy Commissioner/Ontario for the year ending December 31, 1989.

Yours truly,

A handwritten signature in black ink, appearing to read 'S. Linden', with a long horizontal flourish extending to the right.

Sidney B. Linden  
Information and Privacy Commissioner/Ontario





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# COMMISSIONER'S MESSAGE

It has been two years since the *Freedom of Information and Protection of Privacy Act, 1987* came into effect for ministries in Ontario. In my first annual report, I discussed the events of our first year of operation, — the organizational and administrative matters that occupied so much of our time.

At the end of our second year, I am gratified at the smoothness with which the legislation is being administered. Both in our agency and in the various ministries, agencies, boards and commissions, freedom of information and protection of privacy issues are being addressed with sensitivity and skill.

The co-operation from staff at the Freedom of Information and Privacy Branch of Management Board of Cabinet has been excellent. Furthermore, the continuation of our positive working relationship with the many Freedom of Information and Privacy Co-ordinators across the provincial government has been a highlight of our success.

A great deal of progress has occurred within the Commissioner's office during the past year. The automation of all systems in the office, and the development of considerable research capacity have added to our ability to address complex and difficult issues.

In the course of the appeals process, we examined hundreds of matters, reviewed countless submissions and decided many issues. In total, 102 orders were issued in 1989 and many other appeals were resolved through the mediation process. The summaries of appeals decided by this office have formed a considerable body of precedent that is of general value in interpreting the *Act*. The summaries of settled cases have also become an invaluable aid in inter-

preting the *Act*. These summaries, which are issued regularly throughout the year, have been consolidated and are now being published under separate cover as Volume Two to this report.

Freedom of information and protection of privacy will expand to cover local government agencies across Ontario in January 1991. Our office has spent considerable time preparing to meet the challenge that an additional 3,000 institutions will bring to our work.

We have undertaken an organizational review — this report discusses some of the details, most of which will be in place by January 1, 1991.

We are looking forward to the implementation of the *Municipal Freedom of Information and Protection of Privacy Act, 1989*, and the challenges it will bring. Administering the *Freedom of Information and Protection of Privacy Act, 1987* continues to be demanding, but we are confident that our efforts will be rewarded by greater understanding and acceptance of the legislation.

# MANDATE

From a set of principles enunciated by the Commission on Freedom of Information and Individual Privacy (the "Williams Commission") in the early 1980s, the concepts of access to government-held information and protection of personal privacy have been codified in Ontario's *Freedom of Information and Protection of Privacy Act, 1987*. Chief among these principles is the integration of both the concepts in one statute.

One of the challenges facing the Information and Privacy Commissioner is to uphold these separate values and to strike the proper balance, when necessary, between the public's right to know and an individual's right to confidentiality of personal information.

The *Act* requires government institutions to make initial determinations regarding the proper application of the law. However, the *Act* also recognizes that these decisions are sometimes difficult and complex, and that, in the words of the *Act*: "decisions on the disclosure of government information should be reviewed independently of government." The *Act* gives this responsibility to the Commissioner, and to ensure his independence, the Commissioner is made an Officer of the Legislature, reporting directly to the Assembly.

One of the Commissioner's key functions is to receive and consider appeals from members of the public who have been refused access to government of Ontario general records, or have been denied access to their own personal information. Any decision made by a head under the *Act* may be appealed to the Commissioner.

The *Act* also recognizes that the adequate protection of personal privacy is contingent on government institutions conforming to certain standards regarding the collection, storage, dissemination and ultimate disposal of personal information. The Commissioner is responsible for ensuring adherence to the standards set by the *Act* and its regulations. If he finds, as a result of an investigation, that a government institution's personal information practices contravene the *Act*, the Commissioner is empowered to order the institution to cease a collection practice, or to destroy records containing personal information.

The *Act* also gives the Commissioner an advisory role. Whenever proposed legislation or new government programs include provisions with privacy protection implications, the Commissioner can offer his comments.

The experience of other jurisdictions indicates that the effectiveness of the rights granted under freedom of information and privacy legislation is directly related to the public's knowledge of those rights. To ensure public awareness, Ontario's Commissioner is authorized to conduct public education programs and provide information on the Commissioner's role and activities.

The Commissioner can also conduct research on any matter relating to the purposes of the *Act*. Because we live in what can accurately be characterized as "the information society", innovative technologies continue to expand the role of information as a commercial, scientific and social decision-making tool. Although there are widely accepted benefits to this kind of technological advancement, the *Act* recognizes the need to carefully monitor and assess the impact these changes will have on personal privacy and access to information.

Finally, the *Act* recognizes the value of active public participation in the implementation of rights established by the law, by allowing members of the public to make complaints and express opinions regarding the operation of the legislation.

In 1989, the Office of the Information and Privacy Commissioner consisted of three Branches - Corporate Services; Legal Services; and Compliance.

## Commissioner's Office

During 1989, the Commissioner was actively involved in all aspects of the Office's administrative and operational development. As the agency's chief executive officer, he provided overall administrative and policy direction, though day to day matters were delegated to the agency's three branch Directors, who reported to the Commissioner.

In 1989, 102 orders were processed by the Commissioner's office. Beginning in 1990, conducting inquiries and issuing orders will be shared with an Assistant Commissioner.

The Commissioner's office continued to develop good relations with the Freedom of Information and Privacy Branch of Management Board of Cabinet on a broad range of issues, including legislation dealing with confidentiality provisions in other statutes; municipal freedom of information and protection of privacy legislation and related bills. When these bills were referred to the Standing Committees on the Legislative Assembly and Administration of Justice, the Commissioner's office participated in the committees' deliberations. At the same time, the office continued its activities with various offices and departments of the Office of the Assembly and the Board of Internal Economy.

During the latter half of 1989, the Commissioner initiated discussions on the impact to the agency of the expansion of access and protection of privacy legislation to local government bodies. The results of that discussion led to the selection of Touche Ross, management consultants, to undertake an organizational review of the agency. Based on their recommendations, the Office will adopt a new organizational structure for 1990.

The Commissioner's staff continued to consist of an executive assistant, a senior policy advisor and an administrative assistant.

## Corporate Services

### Administration

This branch's activities in 1989 included supervising the hiring of new staff for the other departments, and its own growth in response to added responsibilities. To assist the Director of Corporate Services, a Manager of Administration was hired to deal with the various support services, including purchasing, equipment maintenance, printing, office leasing and office security. In addition, the branch continued to prepare, administer and monitor the agency budget and conduct financial analyses. Over the course of the year, the Director took on added operational responsibilities in the appeals and compliance areas.

The branch continued to be the principal contact for the various offices and departments of the Office of the Assembly, as well as the Board of Internal Economy.

### Communications

The Communications branch welcomed a new Manager during the summer of 1989, who prepared a communications and outreach plan for 1990. One of the main emphases will be on the training of local government officials as they prepare for the 1991 implementation of the *Municipal Freedom of Information and Protection of Privacy Act, 1989*. The branch will be conducting its municipal outreach program in conjunction with Management Board of Cabinet, participating in the latter's awareness sessions for local government bodies.

The branch was also responsible for handling all information calls from members of the general public, and for providing French language services to the agency.

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## Legal Services

During 1989, Legal Services provided all required legal support to the agency, and was also responsible for processing appeals made to the Commissioner under the *Act*. It consisted of two units, headed by a Director.

### Appeals

The Appeals unit consists of a Manager and 11 Appeals Officers. The unit is responsible for processing appeals filed under the *Act*, which involve denial of access to general records, third party information, access to personal information, or correction of personal information on file with the government.

Staff deal directly with appellants and various government institutions in an attempt to mediate settlements of issues arising in the appeals, and also assist with cases which proceed to the inquiry stage.

### Legal Services

The Legal Services unit provides opinions and other general legal services for the agency. Duties include the analysis of comparative legislation in other jurisdictions; reviewing relevant court decisions; preparing commentaries on emerging information and privacy issues; and providing legal opinions to Appeals Officers and Compliance Officers on issues arising in the context of appeals, investigations and reviews.

## Compliance

The Compliance branch is primarily involved with ensuring that provincial institutions comply with the various provisions of the *Act*. In-

vestigations conducted by this branch deal with both access to information and privacy protection. The branch consists of three units, and is headed by a Director.

### Compliance Investigations and Reviews

The *Act* requires that Ontario government institutions adhere to certain standards and practices intended to protect the integrity of personal information in the custody and control of these institutions. The compliance unit is responsible for ensuring that institutions properly discharge this responsibility.

The unit consists of a Manager and four Compliance Officers, who investigate compliance issues arising either in the context of an appeal or as a result of a complaint from a member of the public. The unit also monitors government policies dealing with the collection and disposal of personal records, and provides advice and consultation on the privacy implications of existing or planned computer systems in various government institutions.

In its second year of operation, the compliance unit concentrated on developing and implementing review practices and procedures applicable to the context of privacy protection, and began to conduct a number of reviews and investigations into specific institutional practices.

### Systems

The Computer Systems unit is responsible for the development, implementation and ongoing administration of the agency's computer-related requirements. During the first year of operation, this unit designed and introduced a computerized tracking system for external users, several databases for internal use, automated reports and other related projects, all of which operate on a local area network. The agency's word and data processing requirements are also handled by this unit.



## Research and Statistics

The Research and Statistics unit provides research support and program evaluation for various aspects of the Commissioner's mandate. Over the past year, the unit's main focus has been monitoring data collection techniques used by all scheduled institutions, to ensure consistency of methodology in the various reporting requirements outlined in the *Act*. The unit has also been involved in other research-related activities including designing forms, surveys and questionnaires; a detailed study and analysis of trends, methodologies and information practices of government institutions; developing effective procedures for the compilation and tracking of information throughout the government; reviewing relevant literature; and collecting and compiling statistical data from all scheduled institutions for their inclusion in the Commissioner's Annual Report.

## Reorganization

On January 1, 1991, some 3,000 local government bodies will come under the *Municipal Freedom of Information and Protection of Privacy Act, 1989*. As with the provincial *Act*, the Information and Privacy Commissioner is the agency to which the public can appeal when a request for access to records or personal information is refused, or if they wish to complain about an invasion of personal privacy.

The impact on the Commissioner's Office of another level of government will be significant. All the roles and responsibilities assigned to the Commissioner under the provincial *Act* are duplicated under the municipal *Act*. For the Commissioner's Office to be able to fulfil its multiple mandates in relation to both levels of government, the Office will need to be organized in the most effective manner possible. Recognizing this objective, a management consultant was hired to review the Office's existing administrative and institutional arrangements to determine whether any changes should be made as a result of the expanded mandate in 1991.

Accordingly, the consultant conducted an organizational review during the summer and fall of 1989 and submitted a report recommending significant changes. Those changes were completed in early 1990, and will be outlined in next year's Annual Report.

# PRACTICES AND PROCEDURES

## The Appeal Process

The 1988 Annual Report described some of the unusual features of the *Act*, in particular the fact that the *Statutory Powers Procedure Act* does not apply to the Commissioner's appeal procedures. This does not mean, however, that the Commissioner has absolute discretion to determine the inquiry process. Section 52 of the *Freedom of Information and Protection of Privacy Act, 1987*, in addition to setting out the powers of the Commissioner during an inquiry, also contains several provisions relating to the procedural rights of persons participating in an inquiry.

For example, anyone involved in an inquiry may be represented by counsel or an agent. Also, the appellant, the head, and any affected party must be provided with an opportunity to make representations to the Commissioner, although the form of those representations is left to the discretion of the Commissioner. Section 52 also provides that no person is entitled to be present during, or to have access to or to comment on representations made to the Commissioner by any other person. Moreover, the section permits an inquiry to be conducted in private, at the Commissioner's discretion.

The *Act* gives the Commissioner considerable latitude in devising procedures, and the design of these procedures is necessarily shaped by the special nature of the issues and decisions the Commissioner is required to make. For example, some appeals involve disputes relating to records containing personal information or records under consideration by the Executive Council. Both of these types of records are exempt from disclosure under the *Act*.

If the contents of any such records were disclosed to the public during an inquiry, this would render the exemption and the appeal meaningless, so it is necessary to design procedures which address these unique issues while at the same time upholding the basic principles of fairness.

Apart from the procedural rights mentioned above, and the requirement that following unsuccessful mediation an appeal shall proceed to an inquiry, the *Act* is largely silent as to how the appeal process should work and what procedures the Commissioner should employ. While the procedures followed during the appeal process will continue to evolve as the Commissioner's Office gains more experience, they will always be guided by the overall principle of fairness.

What follows is an outline of the appeal process, from the mediation stage through to an inquiry and a binding order.

Subsection 50(1) of the *Act* gives a person who has made a request for:

- (a) access to general records;
- (b) access to personal information; or
- (c) correction of personal information;

the right to appeal any decision of a head under the *Act* to the Commissioner. A third party who has been given notice of a request for access to general records also has a right of appeal by the Commissioner.

The requester has 30 days after notice of the decision was given by the head to file a written notice of appeal with the Commissioner. After an appeal is filed, the head of the institution and any affected persons are notified of the appeal.

It is the Commissioner's practice to attempt to mediate all appeals, although in exceptional circumstances an appeal may proceed directly to an inquiry. An Appeals Officer is assigned to the case. Where access to a particular record is in dispute, the Appeals Officer will review the record and attempt to mediate a settlement between the parties. The Appeals Officer ascertains the issues arising from the appeal and determines the respective positions of the parties. The Appeals Officer will contact both the appellant and the government representative

to ensure there are no misunderstandings. If settlement is not possible or only partially successful, the appeal proceeds to an inquiry. The Appeals Officer prepares a report which sets out the facts and issues arising from the appeal.

A formal Notice of Inquiry is sent to all parties, together with a copy of the Appeals Officer's Report. The parties are advised of their right to make representations to the Commissioner with respect to the issues arising from the appeal, and although the Appeals Officer's Report attempts to identify all relevant issues, it is made clear to the parties that they are free to address any other issues in their representations.

The Commissioner's normal practice is to require written submissions, and the parties are provided with a reasonable period of time to prepare their representations.

The representations of the parties are reviewed and analyzed, and when the Commissioner has all the necessary information, he prepares a written order disposing of all issues in the appeal. A copy of the Commissioner's Order is sent to each party. The order is also summarized and published in the agency's **Summaries of Appeals**, which are distributed regularly.

## The Compliance Function

The *Act* requires the Commissioner to undertake an annual review of the effectiveness of the *Act*, and to assess the extent to which Ontario government institutions are complying with the *Act's* provisions. After completing this review, the Commissioner is authorized to make recommendations regarding the practices of individual ministries and agencies.

To discharge these responsibilities, the Commissioner must investigate, monitor, assess, evaluate, review and generally oversee how various institutions have implemented the *Act* and its regulations.

The Commissioner's compliance function operates at two levels.

First, the Commissioner has a general responsibility for ensuring that government institutions are complying with the *Act* as a whole. The scope of this responsibility encompasses matters such as compliance with statistical reporting requirements; proper processing of requests for information; and a wide range of records management issues.

On a more specific level, the Commissioner must satisfy himself that institutions have complied with those sections of the *Act* that seek to "protect the privacy of individuals with respect to personal information about themselves held by institutions and to provide individuals with a right of access to that information."

The *Act* establishes certain requirements dealing with the collection, retention, use, disclosure, disposal and security of personal information. In addition, Management Board of Cabinet is responsible for ensuring that regulations are in place which establish uniform administrative standards in each of the above-mentioned areas.

The Compliance branch of the Commissioner's Office becomes involved when a public complaint has been received by the Office, when an appeal raises compliance or privacy issues, or when the Commissioner determines that a particular issue warrants investigation.

In instances where complaints are filed by members of the public, a Compliance Investigator will contact both the complainant and representatives of the institution to explore the issues raised in the complaint. A report is sent to both the complainant and the institution.

Appeals often involve a number of issues besides the denial of a request for access. These issues could include compliance concerns such as the manner in which personal information can be retrieved, or the extent to which an institution is complying with the *Act*. A compliance issue could be limited to one specific aspect of the operation of the institution or could have ministry-wide implications. In either case, Compliance Investigators are directed to conduct a thorough review of the institution's practices and procedures, and to report their findings to the Commissioner.

The Compliance branch is also involved in systematic reviews of various institutions where problems have been identified or where a particular ministry or agency recognizes the need to evaluate and perhaps change its administrative and records management practices in order to comply with the provisions of the *Act*. Because the *Act* has imposed new standards and practices for all government institutions to follow, many ministries and agencies are reviewing their procedures and practices. The Compliance branch is available to assist in this process.

The systematic reviews conducted by the Compliance branch focus on such matters as record keeping practices, security systems, and the various storage, retrieval and disposal practices used by institutions in dealing with the personal information in their custody and control.

In some cases, an investigation or review could result in recommendations by the Commissioner that a particular institution change its practices and procedures in order to comply with the *Act*. In more serious cases, the Commissioner might order an institution to cease a collection practice, or to destroy collections of personal information that contravene the *Act*. If such an order is being considered, subsection 59(b) of the *Act* requires that the head of the institution be first provided with an opportunity to present arguments to the Commissioner.



## SECTION 58 (2): EFFECTIVENESS REVIEW

Subsection 58(2) of the *Act* requires the Commissioner to undertake a comprehensive review of the effectiveness of the *Act* in providing access to information and protection of personal privacy. This subsection further stipulates that at least three matters must be included in the Commissioner's review, namely:

- a summary of the nature and ultimate resolution of appeals;
- an assessment of the extent to which institutions are complying with the *Act*; and
- the Commissioner's recommendations regarding practices of particular institutions and proposed revisions to the *Act* and regulations.

These matters will be dealt with separately in this section of the Annual Report.

The wording of subsection 58(2) suggests that the Commissioner's review need not necessarily be restricted to the three matters listed above. Rather, all relevant and pertinent matters should be included, in order that the Commissioner's Annual Report comprise a comprehensive review of the *Act*.

To appreciate the effectiveness of any new legislation, it is often useful to look at the new provisions in the context of what preceded it.

Before the *Freedom of Information and the Protection of Privacy Act*, 1987 came into force on January 1, 1988, access to government information in Ontario was largely discretionary. It was up to individual ministers to decide whether the public interest warranted the release of specific records or information, and, as the Williams Commission discovered, this resulted in inconsistent and ad hoc practices. The public had no legal right to ask for, let alone receive, government information, and the civil service oath of secrecy acted as a further disincentive to disclosure of records in the custody and control of the provincial government bureaucracy.

This tradition of official secrecy was quite understandable, since it was inherited from Great Britain as part of our constitutional heritage. However, it is fair to say that, prior to the passage of the *Act* in 1987, principles of secrecy were deeply entrenched at all levels of the Ontario government.

In passing the *Freedom of Information and Protection of Privacy Act*, 1987 the Ontario Legislature broke with this inherited tradition, and, for the first time, gave the public a legal right of access to government records and to their own personal information. This right to physical access alone, however, will not achieve all of the *Act's* goals and objectives. In the long run, the success of the *Act* will be measured in part on the basis of how well it has succeeded in changing the attitudes of government officials as custodians of information. The effectiveness of the *Act*, therefore, must be measured in qualitative as well as quantitative terms.

In the following pages, statistical data along with other interpretive material will be presented. The aim of this presentation is to provide a comprehensive review of the *Act* in its second year of operation.

### Summary of the Nature and Ultimate Resolution of Appeals

Subsection 58(2)(a) of the *Act* requires the Commissioner to summarize the nature and ultimate resolution of appeals. This summary is intended to provide an overview of the appeal process at both the mediation and inquiry stages.

In order to provide the proper context for analysing the appeal process, it is necessary to begin by looking at the initial requests for general records or personal information made to the various ministries and agencies covered by the *Act*. The statistical material provided below, has been gathered from Ontario government institutions pursuant to section 34 of the *Act*, which requires heads of institutions to



report the following matters to the Commissioner:

- (a) the number of requests for access to records made to the institution;
- (b) the number of refusals by the head to disclose a record, the provisions of this Act under which disclosure was refused, and the number of occasions on which each provision was invoked;
- (c) for each provision of this Act in respect of which an appeal of a decision of a head has been commenced, the number of appeals commenced;
- (d) the number of uses or purposes for which personal information is disclosed where the use or purpose is not included in the statements of uses and purposes set forth under clauses 45(d) and (e);
- (e) the amount of fees collected by the institution under section 57; and
- (f) any other information indicating an effort by the institution to put into practice the purposes of this Act.

### Statistics Relating to Requests Received by Ministries and Agencies

Each year, the various ministries and agencies report to the Commissioner, providing information on the general record, personal information and correction requests received and the actions taken to resolve those requests.

As in 1988, 100 per cent of the institutions listed in the schedule to the *Freedom of Information and Protection of Privacy Act, 1987* completed and submitted a report of activities in 1989. Once received by the Commissioner, these reports were checked for internal consistency and any discrepancies were rectified. However, some inconsistencies became evident once the data had been aggregated and prepared in tabular format. Wherever possible these inconsistencies have been resolved, but

because of the various interpretations possible in the accounting process some may remain. Where a discrepancy exists which cannot be resolved, the figures supplied by the institutions have been assumed to be accurate.

In all, provincial institutions received 8,757 requests under the *Freedom of Information and Protection of Privacy Act, 1987*. Of these, 5,980 were for general records, 2,684 were for personal information and 93 were for corrections (Table 1).

As reported by the institutions, the vast majority of requests were answered during 1989 and only a small proportion were carried over into 1990. Among general record requests, 5,549 were completed and 355 carried over. Among personal information requests 2,696 were completed and 124 carried over. Among correction requests all 93 were completed in 1989 (Table 1).

The overall rate of completion of 95.2 per cent in 1989 compares quite favourably with the rate of 89.0 per cent, achieved in 1988, even though the volume of requests had almost doubled from 1988's 4,784 (Table 9). Because data fluctuates naturally from year to year, there will be increases and decreases in the numbers that occur simply by chance. Comparison between two adjacent years can be misleading and result in erroneous conclusions. This is particularly true if those two years are at the beginning of a new process when many activities and procedures are still evolving. Only after a number of "stable" years do trends start to emerge and forecasts become possible.

There were almost twice as many requests for general records as for personal information in 1989, a change from the virtually even split seen in 1988 (Table 9). To a large extent the difference can be accounted for by a change in the proportions of requests reported by one ministry, the Ministry of Revenue. From 170 general record requests and 616 personal information requests in 1988; the Ministry of Revenue reported receiving 3,044 general record

requests and 88 personal information requests in 1989 Year Totals provided in (Table 10).

Most of the requests made in 1989 were made to ministries. The greatest number of requests was reported by the Ministry of Revenue followed by the Ministry of Correctional Services, the Ministry of Community and Social Services and the Ministry of Health. These four ministries accounted for just over 50 per cent of requests received by ministries and just over 70 per cent of all requests. These four ministries also received the highest number of requests in 1988 (Table 10).

Among provincial agencies, the Workers' Compensation Board received the most requests, followed by the Liquor Control Board of Ontario, Ontario Hydro and the Archives of Ontario. Although requests to these four agencies accounted for approximately 75 per cent of requests made to agencies, they accounted for just under 20 per cent of all requests (Table 10).

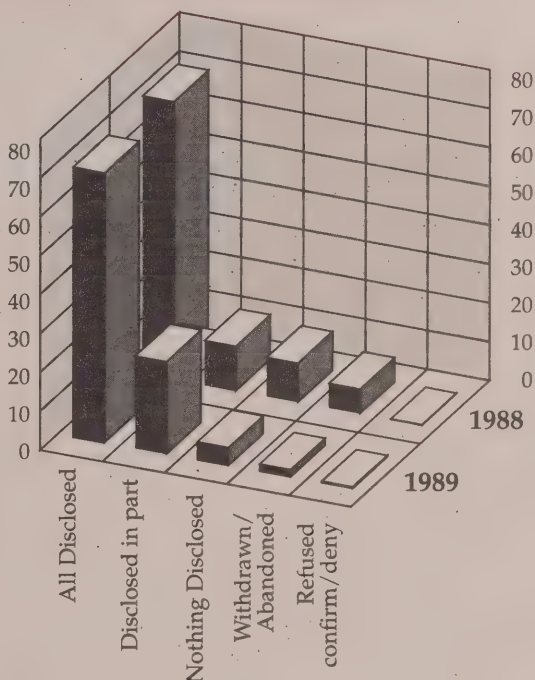
### Time Taken to Complete Requests

Most requests were completed within the 30 days allowed by the legislation (Table 2). Among general record requests, 81.5 per cent were completed within 30 days, and 89.8 per cent of personal information requests were completed within 30 days. Only 1.6 per cent of all requests required 121 days or more to complete. This is an improvement over 1988, when 74.0 per cent of general record requests and 85.5 per cent of personal information requests were completed within 30 days (Table 11).

In the majority of cases (71.4 per cent of general record requests, 69.4 per cent of personal information requests, 70.8 per cent of all requests) all requested information was disclosed (Table 3 and Figure 1 on page 11). In a further 15.6 per cent of all requests, at least part of the requested information was disclosed. When information was refused it was most frequently done for protection of personal privacy (Table 4); Section 21 of the *Freedom of In-*

*formation and Protection of Privacy Act, 1987* in the case of general records and Section 49 in the case of personal information. The next most frequently applied exemption for both types of requests was Section 14 for law enforcement purposes.

**Figure 1 / Disposition of requests**



### Correction Requests

There was a marked increase in the number of correction requests in 1989, to 93 from 13 the year before (Table 13). Most of these requests were refused (85 of 93), resulting in 59 statements of disagreement being attached to records and 58 notifications of the statement of disagreement sent to persons who had come in contact with the records involved (Table 5).

### Fee Estimates and Waivers

As part of their reports to the Commissioner, ministries and agencies also provide information on the fees collected and waived during

the process of fulfilling requests. For 540 general record requests and 19 personal information requests a fee was collected in 1989 (Table 6). In all, the ministries and agencies developed fee estimates for 1174 requests. Of these, 607 had the fee waived in whole and 8 had the fee waived at least in part. Waiving of the fee was more likely to occur for personal information requests than for general record requests (90.4 per cent versus 43.9 per cent respectively)

requests, for which a source type could be identified, were made by individuals.

For the general record requests, a total of \$55,773.44 in fees were collected, and \$770.95 was collected for personal information requests (Table 6). For general records and personal information requests for which fees were asked, the average fees collected were \$101.78 and \$40.58 respectively. For the two types of requests combined a total of \$10,634.09 was waived.

### **Reasons for the Collection of Fees**

The most frequent reason for charging a fee was for reproduction costs (41.0 per cent of all reasons for fee collection), with shipping and preparation of the material as the next two most frequent reasons for fee charges (Table 7).

### **Categories of Requesters**

The Freedom of Information and Privacy Coordinators completing the year-end reports to the Commissioner were also asked to categorize the type of requester involved in each request (Table 8). This was a subjective judgement on the part of the coordinators but it is useful for the purposes of developing education and out-reach programs. For almost 40 per cent of the requests the coordinators were not able to provide this information. General record requests in particular were not often identified as to source (54.6 per cent).

However, only 5.3 per cent of personal information requests were not classified. In cases where the information was provided, individual requesters made up the bulk of the sources of requests. Virtually all personal information requests (94.3 per cent) were made by individuals, while 52.4 per cent of general record

TABLE 1 / TYPES OF REQUESTS FOR ACCESS

	REQUESTS RECEIVED		REQUESTS COMPLETED		CARRIED OVER TO 1990	
	No.	%	No.	%	No.	%
General records	5980	68.3	5549	66.6	355	74.1
Personal information	2684	30.6	2696	32.3	124	25.9
Corrections	93	1.1	93	1.1	0	0.0
<b>Total</b>	<b>8757</b>	<b>100.0</b>	<b>8338</b>	<b>100.0</b>	<b>479</b>	<b>100.0</b>

TABLE 2 / TIME TAKEN TO COMPLETE REQUESTS

	GENERAL RECORDS		PERSONAL INFORMATION		TOTAL REQUESTS	
	No.	%	No.	%	No.	%
1-30 days	4522	81.5	2421	89.8	6943	84.2
31-60 days	601	10.8	203	7.5	804	9.8
61-90 days	171	3.1	50	1.9	221	2.7
91-120 days	132	2.4	12	.4	144	1.7
121 days or more	123	2.2	10	.4	133	1.6
<b>Total</b>	<b>5549</b>	<b>100.0</b>	<b>2696</b>	<b>100.0</b>	<b>8245</b>	<b>100.0</b>

\* This table excludes correction requests. (The information regarding time to completion was not collected for correction requests.)

TABLE 3 / DISPOSITIONS OF REQUESTS

	GENERAL RECORDS		PERSONAL INFORMATION		TOTAL REQUESTS	
	No.	%	No.	%	No.	%
All disclosed	3962	71.4	1872	69.4	5834	70.8
Disclosed in part	639	11.5	644	23.8	1283	15.6
Nothing disclosed	595	10.7	125	4.6	720	8.7
Withdrawn/abandoned	347	6.3	48	1.8	395	4.8
Refused to confirm/deny	6	0.1	7	0.3	13	0.2
<b>Total</b>	<b>5549</b>	<b>100.0</b>	<b>2696</b>	<b>99.9</b>	<b>8245</b>	<b>100.1</b>

\* Dispositions of correction requests are given separately (Table 6).



TABLE 4 / EXEMPTIONS INVOKED

	GENERAL RECORDS		PERSONAL INFORMATION		TOTAL	
	No.	%	No.	%	No.	%
Section 12 - cabinet records	68	4.7	2	0.1	70	2.4
Section 13 - advice to government	104	7.1	48	3.3	152	5.2
Section 14 - law enforcement	309	21.2	481	33.1	790	27.1
Section 15 - relations with other governments	24	1.6	11	0.8	35	1.2
Section 16 - defence	4	0.3	0	0.0	4	0.1
Section 17 - third party information	142	9.7	7	0.5	149	5.1
Section 18 - economic /other interersts	141	9.7	31	2.1	172	5.9
Section 19 - solicitor-client privilege	78	5.4	36	2.5	114	3.9
Section 20 - danger to safety or health	3	0.2	29	2.0	32	1.1
Section 21 - personal privacy (general records)	474	32.5	N/A		474	16.3
Section 22 - criteria re invansion of privacy	39	2.7	28	1.9	67	2.3
Section 49 - personal privacy (personal info.)	N/A		758	52.1	758	26.0
Section 67 - other acts	71	4.9	24	1.6	95	3.3
<b>Total</b>	<b>1457</b>	<b>100.0</b>	<b>1455</b>	<b>100.0</b>	<b>2912</b>	<b>100.00</b>
Average number of exemptions per request involving a denial of the request	1.2		1.9		1.4	

TABLE 5 / DISPOSITIONS OF CORRECTION REQUESTS

	No.	%
Correction made in whole	7	7.5
Correction made in part	0	0.0
Correction refused	85	91.4
Correction WD/abandoned	1	1.1
<b>Total</b>	<b>93</b>	<b>100.0</b>

Where correction refused:

No. of statements of disagreement attached to record: 59

Notification of statement of disagreement requested: 0

No. of notifications sent: 58

TABLE 6 / CASES IN WHICH FEES WERE ESTIMATED

	GENERAL RECORDS		PERSONAL INFORMATION		TOTAL REQUESTS	
	No.	%	No.	%	No.	%
Collected in whole	540	55.3	19	9.6	559	47.6
Waived in whole	428	43.9	179	90.4	607	51.7
Waived in part	8	0.8	0	0.0	8	0.7
<b>Total</b>	<b>976</b>	<b>100.0</b>	<b>198</b>	<b>100.0</b>	<b>1174</b>	<b>100.0</b>
<b>Total fees collected</b>	<b>\$ 55773.44</b>		<b>770.95</b>		<b>\$ 56544.39</b>	
Average fee collected per request where fee was collected	\$ 101.78		\$ 40.58		\$ 99.73	
<b>Total fees waived</b>	<b>\$ 8103.14</b>		<b>\$ 2530.95</b>		<b>\$ 10634.09</b>	
Average fees waived per request where fee was waived in whole or part	\$ 18.59		\$ 14.14		\$ 17.29	

**TABLE 7 / REASONS FOR COLLECTION OF FEES \***

	GENERAL RECORDS		PERSONAL INFORMATION		TOTAL REQUESTS	
	No.	%	No.	%	No.	%
Reproduction	644	40.6	20	57.1	664	41.0
Shipping	394	24.9	11	31.4	405	25.0
Preparation	412	26.0	3	8.6	415	25.6
Search time	62	3.9	1	2.9	63	3.9
Computer costs	69	4.4	0	0.0	69	4.3
Other	3	0.3	0	0.0	4	0.2
<b>Total</b>	<b>1585</b>	<b>100.1</b>	<b>35</b>	<b>100.0</b>	<b>1620</b>	<b>100.0</b>

\* Multiple reasons for the collection of fees could arise out of each instance in which a collection was considered.

**TABLE 8 / TYPES OF REQUESTERS\***

	GENERAL RECORDS		PERSONAL INFORMATION		TOTAL REQUESTS	
	No.	%	No.	%	No.	%
Individual	1320	23.8	2541	94.3	3861	46.8
Business	543	9.8	10	0.4	553	6.7
Researcher	157	2.8	1	0.0	158	1.9
Media	182	3.3	2	0.1	184	2.2
Association	162	2.9	0	0.0	162	2.0
Other	154	2.8	0	0.0	154	1.9
Unknown	3031	54.6	142	5.3	3173	38.5
<b>Total</b>	<b>5549</b>	<b>100.0</b>	<b>2696</b>	<b>100.1</b>	<b>8245</b>	<b>100.0</b>

\* This table includes all completed requests. (Correction requests are included as personal information requests).

TABLE 9 / TYPES OF REQUESTS FOR ACCESS

	1988		1989		TOTAL	
	REQUESTS RECEIVED	REQUESTS COMPLETED	REQUESTS RECEIVED OR CARRIED OVER FROM PREVIOUS YEAR	REQUESTS COMPLETED	REQUESTS RECEIVED	REQUESTS COMPLETED
General records	2432	2044	5980	5549	8024	7593
Personal information	2338	2203	2684	2696	4887	4899
Corrections	14	13	93	93	106	106
Total	4784	4260	8757	8338	13017	12598

TABLE 10 / REQUESTS RECEIVED AND COMPLETED

	1988		1989		TOTAL	
	Requests Received	Requests Completed	Requests Received or Carried Over	Requests Completed	Requests Received	Requests Completed
Agriculture and Food	4	3	10	9	14	12
<b>Total</b>	<b>4</b>	<b>3</b>	<b>10</b>	<b>9</b>	<b>14</b>	<b>12</b>
Attorney General	139	130	207	161	346	291
Assessment Review Board	2	2	0	0	2	2
Criminal Injuries Compensation Board	3	3	3	3	6	6
Ontario Municipal Board	2	2	1	1	3	3
Office of Public Complaints Commissioner	1	1	1	1	2	2
Public Trustee	5	3	13	8	18	11
<b>Total</b>	<b>152</b>	<b>141</b>	<b>225</b>	<b>174</b>	<b>377</b>	<b>315</b>
Cabinet Office	10	10	9	8	19	18
Premier's Advisory Committee on Executive Resources	0	0	3	3	3	3
<b>Total</b>	<b>10</b>	<b>10</b>	<b>12</b>	<b>11</b>	<b>22</b>	<b>21</b>
Citizenship	7	6	13	8	20	14
Ontario Human Rights Commission	22	20	47	31	69	51
<b>Total</b>	<b>29</b>	<b>26</b>	<b>60</b>	<b>39</b>	<b>89</b>	<b>65</b>
Colleges and Universities	26	22	36	30	62	52
Ontario Council of Regents for Colleges of Applied Arts & Technology	1	1	1	1	2	2
Ontario Graduate Scholarship Selection Board	9	9	14	13	23	22
University Research Incentive Fund Selection Committee	1	1	0	0	1	1
Algonquin College - Nepean	0	0	2	2	2	2
Cambrian College - Sudbury	0	0	2	1	2	1
Canadore College - North Bay	0	0	6	6	6	6
Centennial College - Scarborough	0	0	2	2	2	2
Confederation College - Thunder Bay	0	0	3	3	3	3
Connestoga College - Kitchener	0	0	4	4	4	4
Durham College - Oshawa	0	0	3	3	3	3
Fanshawe College - London	0	0	22	22	22	22
George Brown College - Toronto	0	0	2	2	2	2
Georgian College - Barrie	0	0	3	3	3	3
Humber College - Etobicoke	0	0	3	3	3	3
Lambton College - Sarnia	0	0	3	3	3	3
Mohawk College - Hamilton	0	0	3	2	3	2
Niagara College - Welland	0	0	4	4	4	4
Northern College - South Porcupine	0	0	14	14	14	14
Sault College - Sault Ste Marie	0	0	2	2	2	2
Seneca College - North York	0	0	7	5	7	5
Sheridan College - Oakville	0	0	32	32	32	32
Sir Sanford Fleming College - Peterborough	0	0	27	27	27	27



	1988		1989		TOTAL	
	Requests Received	Requests Completed	Requests Received or Carried Over	Requests Completed	Requests Received	Requests Completed
St Clair College - Windsor	0	0	3	3	3	3
St Lawrence College - Brockville	0	0	2	2	2	2
<b>Total</b>	<b>37</b>	<b>33</b>	<b>200</b>	<b>189</b>	<b>237</b>	<b>222</b>
Community and Social Services	362	342	518	487	880	829
Child & Family Services Review Board	0	0	1	1	1	1
Custody Review Board	0	0	2	2	2	2
Medical Advisory Board - Family Benefits	1	1	0	0	1	1
Social Assistance Review Board	9	8	14	14	23	22
<b>Total</b>	<b>372</b>	<b>351</b>	<b>535</b>	<b>504</b>	<b>907</b>	<b>855</b>
Consumer and Commercial Relations	110	901	160	137	270	228
Ontario Film Review Board	1	1	0	0	1	1
Commercial Registration Appeal Tribunal	1	1	0	0	1	1
Liquor Control Board of Ontario	47	36	150	134	197	170
Liquor License Board of Ontario	1	1	12	9	13	10
<b>Total</b>	<b>160</b>	<b>130</b>	<b>322</b>	<b>280</b>	<b>482</b>	<b>410</b>
Correctional Services	777	632	836	741	1,613	1,373
Minister's Advisory Committee on Corrections	2	2	0	0	2	2
Ontario Board of Parole	21	20	25	24	46	44
<b>Total</b>	<b>800</b>	<b>654</b>	<b>861</b>	<b>765</b>	<b>1,661</b>	<b>1,419</b>
Culture and Communications	7	4	31	25	38	29
Ontario Heritage Foundation	6	5	23	21	29	26
Ontario Science Centre	1	1	3	3	4	4
Archives of Ontario	98	86	121	79	219	165
<b>Total</b>	<b>112</b>	<b>96</b>	<b>178</b>	<b>128</b>	<b>290</b>	<b>224</b>
Office for Disabled Persons	3	2	0	0	3	2
<b>Total</b>	<b>3</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>3</b>	<b>2</b>
Education	115	110	48	39	163	149
Languages of Instruction Commission of Ontario	1	1	0	0	1	1
Planning and Implementation Commission	2	2	0	0	2	2
<b>Total</b>	<b>118</b>	<b>113</b>	<b>48</b>	<b>39</b>	<b>166</b>	<b>152</b>
Energy	6	5	12	9	18	14
Ontario Hydro	323	285	121	93	444	378
<b>Total</b>	<b>329</b>	<b>290</b>	<b>133</b>	<b>102</b>	<b>462</b>	<b>392</b>

	1988		1989		TOTAL	
	Requests Received	Requests Completed	Requests Received or Carried Over	Requests Completed	Requests Received	Requests Completed
Environment	96	81	174	152	270	233
Environmental Assessment Advisory Committee	0	0	2	2	2	2
Ontario Waste Management Corporation	9	9	4	4	13	13
Pesticides Advisory Committee	8	8	0	0	8	8
<b>Total</b>	<b>113</b>	<b>98</b>	<b>180</b>	<b>158</b>	<b>293</b>	<b>256</b>
Financial Institutions	53	30	44	35	97	65
Ontario Securities Commission	14	7	16	16	30	23
Pension Commission of Ontario	40	23	18	17	58	40
Ontario Automobile Insurance Board	0	0	4	4	4	4
<b>Total</b>	<b>107</b>	<b>60</b>	<b>82</b>	<b>72</b>	<b>189</b>	<b>132</b>
Francophone Affairs	8	7	4	4	12	11
Ontario French Language Services Commission	0	0	2	2	2	2
<b>Total</b>	<b>8</b>	<b>7</b>	<b>6</b>	<b>6</b>	<b>14</b>	<b>13</b>
Government Services	104	103	164	156	268	259
<b>Total</b>	<b>104</b>	<b>103</b>	<b>164</b>	<b>156</b>	<b>268</b>	<b>259</b>
Health	351	318	373	351	724	669
Funeral Services Review Board	2	2	0	0	2	2
Health Disciplines Board	15	15	12	12	27	27
Lieutenant Governor's Board of Review	2	2	0	0	2	2
Metropolitan Toronto DHC	0	0	1	1	1	1
Ottawa-Carleton Regional DHC	0	0	18	14	18	14
<b>Total</b>	<b>370</b>	<b>337</b>	<b>404</b>	<b>378</b>	<b>774</b>	<b>715</b>
Housing	55	42	90	80	145	122
Local Housing Authorities	6	6	12	11	18	17
Ontario Housing Corporation	0	0	1	0	1	0
Rent Review Hearing Board	0	0	4	4	4	4
Residential Rental Standards Board	4	4	18	18	22	22
<b>Total</b>	<b>65</b>	<b>52</b>	<b>125</b>	<b>113</b>	<b>190</b>	<b>165</b>
Human Resources Secretariat	50	47	54	47	104	94
<b>Total</b>	<b>50</b>	<b>47</b>	<b>54</b>	<b>47</b>	<b>104</b>	<b>94</b>
Industry, Trade and Technology	79	76	35	34	114	110
Ontario Development Corporation	44	44	12	11	56	55
<b>Total</b>	<b>123</b>	<b>120</b>	<b>47</b>	<b>45</b>	<b>170</b>	<b>165</b>

	1988		1989		TOTAL	
	Requests Received	Requests Completed	Requests Received or Carried Over	Requests Completed	Requests Received	Requests Completed
Intergovernmental Affairs	5	4	1	1	6	5
<b>Total</b>	<b>5</b>	<b>4</b>	<b>1</b>	<b>1</b>	<b>6</b>	<b>5</b>
Labour	122	98	214	184	336	282
Advisory Council on Occupational Health & Safety	1	1	0	0	1	1
Classification Rating Committee	0	0	1	1	1	1
Crown Employees Grievance Settlement Board	2	2	3	2	5	4
Industrial Disease Standards Panel	1	1	0	0	1	1
Ontario Labour Relations Board	7	4	8	7	15	11
Ontario Public Service	0	0	1	1	1	1
Labour Relations Tribunal						
Pay Equity Commission	0	0	2	1	2	1
Workers' Compensation Appeals Tribunal	0	0	1	1	1	1
Workers' Compensation Board	264	233	1,256	1,251	1,520	1,484
Public Service Grievance Board	0	0	2	2	2	2
<b>Total</b>	<b>397</b>	<b>339</b>	<b>1,488</b>	<b>1,450</b>	<b>1,885</b>	<b>1,789</b>
Management Board of Cabinet	20	19	16	15	36	34
<b>Total</b>	<b>20</b>	<b>19</b>	<b>16</b>	<b>15</b>	<b>36</b>	<b>34</b>
Municipal Affairs	21	18	38	29	59	47
<b>Total</b>	<b>21</b>	<b>18</b>	<b>38</b>	<b>29</b>	<b>59</b>	<b>47</b>
Native Affairs	0	0	1	1	1	1
<b>Total</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>
Natural Resources	58	50	90	81	148	131
<b>Total</b>	<b>58</b>	<b>50</b>	<b>90</b>	<b>81</b>	<b>148</b>	<b>131</b>
Northern Development and Mines	7	6	14	14	21	20
Ontario Northland Transportation Commission	1	1	0	0	1	1
<b>Total</b>	<b>8</b>	<b>7</b>	<b>14</b>	<b>14</b>	<b>22</b>	<b>21</b>
Office of the Premier and Cabinet Office	5	4	6	5	11	9
<b>Total</b>	<b>5</b>	<b>4</b>	<b>6</b>	<b>5</b>	<b>11</b>	<b>9</b>
Revenue	786	756	3,132	3,089	3,918	3,845
<b>Total</b>	<b>786</b>	<b>756</b>	<b>3,132</b>	<b>3,089</b>	<b>3,918</b>	<b>3,845</b>

	1988		1989		TOTAL	
	Requests Received	Requests Completed	Requests Received or Carried Over	Requests Completed	Requests Received	Requests Completed
Senior Citizens	4	3	1	1	5	4
<b>Total</b>	<b>4</b>	<b>3</b>	<b>1</b>	<b>1</b>	<b>5</b>	<b>4</b>
Skills Development	24	24	16	11	40	35
<b>Total</b>	<b>24</b>	<b>24</b>	<b>16</b>	<b>11</b>	<b>40</b>	<b>35</b>
Solicitor General	120	112	176	149	296	261
Advisory Committee on Crime Prevention	2	2	0	0	2	2
Animal Care Review Board	2	2	0	0	2	2
Coroners' Council	2	2	0	0	2	2
Fire Code Commission	2	2	0	0	2	2
Ontario Police Arbitration Committee	2	2	0	2	2	2
Ontario Police Commission	7	7	11	11	18	18
<b>Total</b>	<b>137</b>	<b>129</b>	<b>187</b>	<b>160</b>	<b>324</b>	<b>289</b>
Tourism and Recreation	17	15	24	19	41	34
Niagara Parks Commission	0	0	2	2	2	2
Ontario Lottery Corporation	3	3	5	5	8	8
Ontario Place Corporation	2	2	30	24	32	26
St. Lawrence Parks Commission	1	1	3	3	4	4
<b>Total</b>	<b>23</b>	<b>21</b>	<b>64</b>	<b>53</b>	<b>87</b>	<b>74</b>
Transportation	122	110	124	117	246	227
Ontario Highway Transport Board	2	0	1	1	3	1
Go Transit	5	5	3	2	8	7
<b>Total</b>	<b>129</b>	<b>115</b>	<b>128</b>	<b>120</b>	<b>257</b>	<b>235</b>
Treasury and Economics	46	45	48	32	94	77
Stadium Corporation of Ontario Limited	0	0	41	40	41	40
<b>Total</b>	<b>46</b>	<b>45</b>	<b>89</b>	<b>72</b>	<b>135</b>	<b>117</b>
Women's Issues	2	2	2	2	4	4
<b>Total</b>	<b>2</b>	<b>2</b>	<b>2</b>	<b>2</b>	<b>4</b>	<b>4</b>

**TABLE 11 / TIME TAKEN TO COMPLETE REQUESTS**

	1988		1989		TOTAL	
	GENERAL RECORDS	PERSONAL INFORMATION	GENERAL RECORDS	PERSONAL INFORMATION	No.	%
1-30 days	1513	1884	4522	2421	10340	82.7
31-60 days	313	233	601	203	1350	10.8
61-90 days	123	33	171	50	377	3.0
91-120 days	95	53	132	12	292	2.3
121 days or more	N/A	N/A	123	10	133	1.0
<b>Total</b>	<b>2044</b>	<b>2203</b>	<b>5549</b>	<b>2696</b>	<b>12492</b>	<b>100.0</b>

\* This table excludes correction requests. (The information regarding time to completion was not collected for correction requests.)

**TABLE 12 / DISPOSITIONS OF REQUESTS**

	1988		1989		TOTAL	
	GENERAL RECORDS	PERSONAL INFORMATION	GENERAL RECORDS	PERSONAL INFORMATION	No.	%
All disclosed	855	1512	3962	1872	8201	65.6
Disclosed in part	444	477	639	644	2204	17.6
Nothing disclosed	519	145	595	125	1384	11.0
Withdrawn/ Abandoned	224	65	347	48	684	5.4
Refused to Confirm/Deny	2	4	6	7	19	0.1
<b>Total</b>	<b>2044</b>	<b>2203</b>	<b>5549</b>	<b>2696</b>	<b>12492</b>	<b>100.0</b>

\* Dispositions of correction requests are given separately (Table 13).



TABLE 13 / DISPOSITIONS OF CORRECTION REQUESTS

	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	TOTAL	
											No.	%
Correction made	4	7									11	10.4
Correction refused	8	85									93	87.7
Correction wd/ abandoned	1	1									2	1.9
<b>Total</b>	<b>13</b>	<b>93</b>									<b>106</b>	<b>100.0</b>

TABLE 14 / CASES IN WHICH FEES WERE ESTIMATED

	1988		1989		TOTAL	
	GENERAL RECORDS	PERSONAL INFORMATION	GENERAL RECORDS	PERSONAL INFORMATION	No.	%
Collected in whole	124	2	540	19	685	42.1
Waived in whole	295	27	428	179	929	57.0
Waived in part	7	0	8	0	15	0.9
<b>Total</b>	<b>426</b>	<b>29</b>	<b>976</b>	<b>198</b>	<b>1629</b>	<b>100.0</b>

TABLE 15 / REASONS FOR COLLECTION OF FEES \*

	1988	1989		TOTAL		No.	%
	GENERAL RECORDS	PERSONAL INFORMATION	GENERAL RECORDS	PERSONAL INFORMATION			
Reproduction	124	2	644	20	790	40.7	
Shipping	54	1	394	11	460	23.7	
Preparation	54	0	412	3	469	24.1	
Search time	48	0	62	1	111	5.7	
Computer costs	27	0	69	0	96	4.9	
Other	13	0	4	0	17	0.9	
Total	320	3	1585	35	1943	100.0	

\* Multiple reasons for the collection of fees could arise out of each instance in which a collection was considered.

TABLE 16 / TYPES OF REQUESTERS\*

	1988		1989		TOTAL	
	GENERAL RECORDS	PERSONAL INFORMATION	GENERAL RECORDS	PERSONAL INFORMATION	No.	%
Individual	975	1478	1320	2541	6314	50.5
Business	258	88	543	10	899	7.2
Researcher	212	3	157	1	373	3.0
Media	192	2	182	2	378	3.0
Association	101	12	162	0	275	2.2
Other	306	633	154	0	1093	8.7
Unknown	N/A	N/A	3031	142	3173	25.4
<b>Total</b>	<b>2044</b>	<b>2216</b>	<b>5549</b>	<b>2696</b>	<b>12505</b>	<b>100.0</b>

\* This table includes all completed requests. (Correction requests are included as personal information requests.)

## Statistics Relating to the Appeal Process

In 1989, 407 appeals were made to the Commissioner under the *Act* (Table 20). Of these, 310 or 76.2 per cent were in regard to requests for general records, 88 or 21.6 per cent were in regard to requests for personal information and the remaining 9 or 2.2 per cent were in regard to correction requests. This total represents a monthly average of 33.9. Also during 1989, 372 appeals were closed. These appeals had been received in 1989 or carried over from 1988. An average of 31 appeals were closed each month.

The 1989 total of 407 appeals can be compared to the 350 received in 1988, the first year of operation for the Commissioner's office (Table 20). As mentioned previously, the comparison of two adjacent years should be done with caution and with the understanding that, although the comparison may be of interest, any conclusions would be premature.

### Types of Decisions Appealed

Some of the 407 appeals involved more than one decision on the part of the institution. In total, 429 decisions were appealed (Table 18). Of these, 326 (75.9 per cent) were in response to the institution's final decision — either refusing access to the record, refusing to make a correction to the record, refusing to confirm or deny the existence of a record or maintaining that the record did not exist. The refusal of access in whole or in part accounted for 30.5 and 31.0 per cent respectively of all decisions appealed.

The remaining 103 appeals (24.0 per cent) dealt with a preliminary decision made by the institution. These involved fees or fee estimates, time extensions or the possible release of third party information. This matches quite closely the results of 1988, when 20 per cent of appeals were received before the institution's final decision had been reached (Table 21). Areas showing some change between the two years were "fees/fee estimates" (1989 - 22, 1988 - 44)

— perhaps as a result of orders made by the Commissioner clarifying this particular issue; and "no record exists" (1989 - 47, 1988 - 76).

### Specific Institutions

The vast majority of appeals received in 1989 involved ministries (306 or 75.2 per cent), as opposed to agencies (101 or 24.8 per cent) (Table 17). The largest number involved the Ministries of Health (43) and Government Services (39). Among agencies Stadium Corporation was involved in the largest number of appeals (25) and the Workers' Compensation Board involved in the second largest number (19). In 1988 the largest number of appeals involved the Ministries of Health and Correctional Services, and for agencies, the Workers' Compensation Board and Ontario Hydro.

### Disposition of Appeals

It is the Commissioner's goal that a greater proportion of appeals be settled through mediation, rather than through the more time-consuming process of issuing an order. As the number of orders grows and covers a greater range of circumstances, achieving this objective should be possible.

In 1989, 57.5 per cent of the appeals were closed by a settlement and 31.7 per cent were closed through issuing an order (Table 19). In 1988, 48.0 per cent of the appeals were settled, and 39.9 per cent were closed through order. Although two years of data is not sufficient to indicate a trend to fewer orders, it is an encouraging sign.

### Resolved without Order

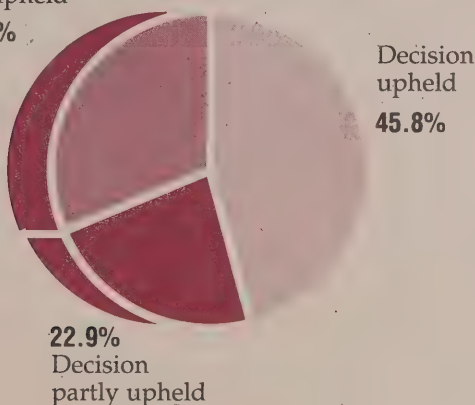
In 1989, 179 of the appeals closed through settlement were settled because the appellant received additional information or a further explanation of the *Act* which satisfied his or her concerns. A further 40 appeals were withdrawn or abandoned.

One hundred and eighteen appeals closed in 1989 were closed through an order issued by the Commissioner (Table 19). An order upholding or partly upholding the Head's decision was made in 81 appeals, while in 37 appeals the Head's decision was not upheld (Figure 2).

**Figure 2 / Order decision**

Decision  
not upheld

**31.4%**



Decision  
upheld

**45.8%**

**22.9%**

Decision  
partly upheld

The 118 appeals resolved by order in 1989 actually translates to 102 orders. The difference between the number of appeals closed by order and the number of orders results from the fact that a single order may cover more than one appeal.

### **Categories of Requests**

The *Act* does not require appellants to provide information about themselves when filing an appeal, but the Commissioner's staff make an effort to determine the various categories of appellants. This determination is subjective and is prese

Of the 407 appeals received in 1989 or carried over from the previous year, 245 or 60.2 per cent were submitted by individuals (Table 25). This was the largest group of appellants, partially explained by the fact that all appeals de-

iving from requests for personal information are considered to be received from individuals. In other categories, representatives of business made up the next most frequent group with 43 appeals, followed by associations with 42 appeals, the media with 34 appeals, researchers with 26 appeals and others making 17 appeals.



TABLE 17 / MINISTRIES AND AGENCIES INVOLVED IN APPEALS RECEIVED

	1988 Appeals	1989 Appeals	TOTAL Appeals
Agriculture and Food	17	3	20
<b>Total</b>	<b>17</b>	<b>3</b>	<b>20</b>
Attorney General	21	16	37
<b>Total</b>	<b>21</b>	<b>16</b>	<b>37</b>
Cabinet Office	1	5	6
<b>Total</b>	<b>1</b>	<b>5</b>	<b>6</b>
Citizenship	0	0	0
Ontario Human Rights Commission	3	14	17
<b>Total</b>	<b>3</b>	<b>14</b>	<b>17</b>
Colleges and Universities	1	2	3
Humber College - Etobicoke	0	1	1
Northern College - South Porcupine	0	1	1
Seneca College - North York	0	1	1
Sheridan College - Oakville	0	12	12
Sir Sanford Fleming College - Peterborough	0	1	1
St Clair College - Windsor	0	1	1
<b>Total</b>	<b>1</b>	<b>19</b>	<b>20</b>
Community and Social Services	25	21	46
Child & Family Services Review Board	0	1	1
Social Assistance Review Board	0	1	1
<b>Total</b>	<b>25</b>	<b>23</b>	<b>48</b>
Consumer and Commercial Relations	11	13	24
Liquor Control Board of Ontario	2	1	3
<b>Total</b>	<b>13</b>	<b>14</b>	<b>27</b>
Correctional Services	59	33	92
<b>Total</b>	<b>59</b>	<b>33</b>	<b>92</b>

	1988 Appeals	1989 Appeals	TOTAL Appeals
Culture and Communications	1	7	8
Ontario Heritage Foundation	0	8	8
Archives of Ontario	6	1	7
<b>Total</b>	<b>7</b>	<b>16</b>	<b>23</b>
Education	8	3	11
<b>Total</b>	<b>8</b>	<b>3</b>	<b>11</b>
Energy	0	1	1
Ontario Hydro	8	5	13
<b>Total</b>	<b>8</b>	<b>6</b>	<b>14</b>
Environment	13	4	17
Ontario Waste Management Corporation	2	0	2
<b>Total</b>	<b>15</b>	<b>4</b>	<b>19</b>
Financial Institutions	8	14	22
<b>Total</b>	<b>8</b>	<b>14</b>	<b>22</b>
Government Services	1	39	40
<b>Total</b>	<b>1</b>	<b>39</b>	<b>40</b>
Health	45	43	88
Metropolitan Toronto DHC - Toronto	0	1	1
<b>Total</b>	<b>45</b>	<b>44</b>	<b>89</b>
Housing	0	8	8
<b>Total</b>	<b>0</b>	<b>8</b>	<b>8</b>
Human Resources Secretariat	0	1	1
<b>Total</b>	<b>0</b>	<b>1</b>	<b>1</b>
Industry, Trade and Technology	11	5	16
<b>Total</b>	<b>11</b>	<b>5</b>	<b>16</b>

	1988 Appeals	1989 Appeals	TOTAL Appeals
Labour	27	25	52
Ontario Labour Relations Board	2	2	4
Workers' Compensation Appeals Tribunal	0	1	1
Workers' Compensation Board	11	19	30
<b>Total</b>	<b>40</b>	<b>47</b>	<b>87</b>
Management Board of Cabinet Secretariat	2	2	4
<b>Total</b>	<b>2</b>	<b>2</b>	<b>4</b>
Municipal Affairs	3	4	7
<b>Total</b>	<b>3</b>	<b>4</b>	<b>7</b>
Natural Resources	4	11	15
<b>Total</b>	<b>4</b>	<b>11</b>	<b>15</b>
Northern Development and Mines	0	0	0
Ontario Northland Transportation Commission	0	1	1
<b>Total</b>	<b>0</b>	<b>1</b>	<b>1</b>
Revenue	6	3	9
<b>Total</b>	<b>6</b>	<b>3</b>	<b>9</b>
Skills Development	5	3	8
<b>Total</b>	<b>5</b>	<b>3</b>	<b>8</b>
Solicitor General	29	23	52
<b>Total</b>	<b>29</b>	<b>23</b>	<b>52</b>
Tourism and Recreation	2	3	5
Ontario Lottery Corporation	0	4	4
<b>Total</b>	<b>2</b>	<b>7</b>	<b>9</b>
Transportation	12	4	16
<b>Total</b>	<b>12</b>	<b>4</b>	<b>16</b>

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	1988 Appeals	1989 Appeals	TOTAL Appeals
Treasury and Economics	2	8	10
Stadium Corporation	2	25	27
of Ontario Limited			
<b>TOTAL</b>	<b>4</b>	<b>33</b>	<b>37</b>

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Women's Issues	0	2	2
<b>TOTAL</b>	<b>0</b>	<b>2</b>	<b>2</b>

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TABLE 18 / TYPES OF DECISIONS APPEALED

	GENERAL RECORDS	PERSONAL INFORMATION	TOTAL No.	%
Access refused in part	77	54	131	30.5
Access refused in whole	119	14	133	31.0
No record exists	33	14	47	11.0
Fees/fee estimate	22	0	22	5.1
Third party information	7	1	8	1.9
Time extensions	25	3	28	6.5
Method of access	0	0	0	0.0
Refused to confirm/deny	2	4	6	1.4
Correction(s) refused	N/A	9	9	2.1
Other	38	7	45	10.5
<b>Total</b>	<b>323</b>	<b>106</b>	<b>429</b>	<b>100.0</b>

NOTE: The total number of decisions appealed exceeds the total appeals (Table 20) due to the fact that some appeals involved more than one decision. The numbers reported above reflect the number of times each decision was appealed.



TABLE 19 / TOTAL DISPOSITIONS OF ALL APPEALS

MEDIATION STAGE	REQUESTER APPEAL		THIRD PARTY APPEAL		TOTAL	
	No.	%	No.	%	No.	%
Settled	169	84.1	10	83.3	179	84.0
Appellant received more information	(100)		(6)		(106)	
Explanation of the Act satisfied appellant	(69)		(4)		(73)	
Non-jurisdictional	0	0.0	0	0.0	0	0.0
Withdrawn	26	12.9	2	16.7	28	13.1
Abandoned	6	3.0	0	0.0	6	2.8
<b>Total</b>	<b>201</b>	<b>100.0</b>	<b>12</b>	<b>100.0</b>	<b>213</b>	<b>100.0</b>
Inquiry stage	No.	%	No.	%	No.	%
Orders						
Head's decision upheld	49	43.8	5	83.3	54	45.8
Head's decision partly upheld	26	23.2	1	16.7	27	22.9
Head's decision not upheld	37	33.0	0	0.0	37	31.4
<b>Total ordered cases</b>	<b>112</b>	<b>100.0</b>	<b>6</b>	<b>100.0</b>	<b>118</b>	<b>100.0</b>
Other						
Withdrawn	5	12.5	1	100.0	6	14.6
Settled	35	87.5	0	0.0	35	85.4
<b>Total other cases</b>	<b>40</b>	<b>100.0</b>	<b>1</b>	<b>100.0</b>	<b>41</b>	<b>100.0</b>
<b>Total inquiry cases</b>	<b>152</b>	<b>-</b>	<b>7</b>	<b>-</b>	<b>159</b>	<b>-</b>
<b>Total closed cases</b>	<b>353</b>	<b>-</b>	<b>19</b>	<b>-</b>	<b>372</b>	<b>-</b>

TABLE 20 / TYPES OF APPEALS

	1988		1989	
	APPEALS RECEIVED	APPEALS COMPLETED	APPEALS RECEIVED OR CARRIED OVER FROM PREVIOUS YEAR	APPEALS * COMPLETED
General records	259	143	310	283
Personal information	86	53	88	80
Corrections	5	2	9	9
<b>Total</b>	<b>350</b>	<b>198</b>	<b>407</b>	<b>372</b>

\* Completed in 1989 were received in 1988 or 1989.

TABLE 21 / TYPES OF DECISIONS APPEALED \*

	1988	1989	1990	1991	1992
Access refused in part	111	131			
Access refused in whole	87	133			
No record exists	76	47			
Fees/fee estimate	44	22			
Third party information	15	8			
Time extensions	10	28			
Method of access	8	0			
Refused to confirm/deny	6	6			
Correction(s) refused	5	9			
Other	17	45			
<b>Total</b>	<b>379</b>	<b>429</b>			

\* The total number of decisions appealed exceeds the total appeals (Table 20) due to the fact that some appeals involved more than one decision. The numbers reported above reflect the number of times each decision was appealed.

	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	TOTAL	
											No.	%
Mediation stage	105	213									318	55.8
Inquiry stage	93	159									252	44.2
<b>Total</b>	<b>198</b>	<b>372</b>									<b>570</b>	<b>100.0</b>

TABLE 23 / MEDIATION STAGE

	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	TOTAL	
											No.	%
Settled	87	179									266	83.6
Appellant received more information	(43)	(106)									(149)	
Explanation of the Act satisfied appellant	(44)	(73)									(117)	
Non-jurisdictional	7	0									7	2.2
Withdrawn	10	28									38	11.9
Abandoned	1	6									7	2.2
Total	105	213									318	100.0

### TABLE 24 / INQUIRY STAGE

[illegible]



TABLE 25 / TYPES OF REQUESTERS INVOLVED IN APPEALS\*

	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	TOTAL		
												No.	%
Individual	226	245										471	62.2
Business	48	43										91	12.0
Researcher	21	26										47	6.2
Media	19	34										53	7.0
Association	18	42										60	7.9
Other	18	17										35	4.6
Total	350	407										757	100.0

\* Since the requester in all personal information and correction requests is the individual or an authorized representative, all these requesters are treated as individuals.

## Compliance with the Act

### Appeals

Subsection 58(2)(b) of the *Act* requires the Commissioner to assess the extent to which institutions are complying with the *Freedom of Information and Protection of Privacy Act*, 1987.

The first two years of the *Act*'s operation were a period of learning and development. The initial training given provincial government ministries and agencies by Management Board of Cabinet provided institutions with guidance as to the interpretation of their responsibilities as outlined under the *Act*. This guidance has been supplemented as the Commissioner has published his interpretations of institutions' responsibilities under the *Act*. These interpretations are found in the Commissioner's decisions or orders on appeals and in recommendations, which may arise as a result of investigation into appeals or into complaints that an institution has breached its obligations under Part III of the *Act*, which covers the collection, retention and use of personal information.

### Decisions on Appeals

Decisions on appeals may contain mandatory orders which provide guidance by the Commissioner on the interpretation of the exemption sections of the *Act*. These decisions are summarized regularly by the Commissioner's Office and are being published as Volume Two to this report. However, some of the decisions which define institutions' procedural obligations, also made during 1989, are relevant to the topic of institutions' compliance with the *Act*. These decisions have far-reaching implications for the day-to-day operation of institutions under the *Act*.

For example, Orders 38 and 99 dealt with the way in which institutions interpret requests. Often requests are ambiguous, and do not clearly outline what records are wanted. In each of these appeals, the requester had made a broadly worded request. The institution searched in a specific area. Upon finding no

records, the institution did not request further information from the requester to assist them in their search, nor did they advise the requester of the extent of the search they conducted. In his Orders, the Commissioner made it clear that an institution may not narrow its field of search for records without consulting (or at least informing) the requester.

The Commissioner presented three possible responses an institution could make to broadly-worded requests. First, it could choose to respond literally to the request and conduct an institution-wide search for the records requested. Second, it could request further information from the requester so it could narrow its area of search. Finally, it could narrow the area of search unilaterally, but if doing so, it should outline the limits of the search to the requester. This procedure would help to prevent misunderstandings as to the scope of the request and the nature of the search that was conducted.

Order 38 also concerned the institution's obligation to indicate to the requester, by at least a general description, what records in its custody or control might respond to a request. Unless the institution is claiming the right to refuse to confirm or deny the existence of a record, which it may do in certain specific circumstances, the Commissioner indicated it must in its letter of response advise the requester which records might respond to the request, even if the institution is denying access to those records.

Another decision addressed an incorrect view, held by many institutions, that the *Act* does not require an institution to review records before issuing a response to the requester, and that issuing a fee estimate constitutes a response within the 30-day time period established by the *Act*. Order 81 has made it clear that, in the majority of cases, the institution must review all of the records that would respond to the request before responding to the requester within the 30-day time period.

If full access is not to be given, the institution's letter to the requester must generally describe the records, indicate what section of the *Act* is being relied upon to exempt the records and why. Only in cases where records are unduly expensive to produce for review may the institution make an interim decision as to access.

An institution's interim decision is general in nature and does not represent a final decision as to access. The interim decision may be made through consultation within the institution concerning the probable contents of the record, or by sampling records. The interim decision may be accompanied by a request for at least partial payment of the estimated cost of producing the records. The interim decision must make the requester aware of what exemptions are likely to apply, and that a final decision as to access has not yet been made.

The interim decision process has the effect of allowing the requester to make a reasonably informed choice about whether to pursue the request, given the cost of the information. If the requester chooses to pay (or successfully appeals the fee estimate), the institution must produce the records, review them and make a final decision as to access.

Order 50 dealt with the institution's responsibilities where it receives a request for information that doesn't currently exist in the form it has been requested. The issue was whether the institution was obliged to create a record containing the requested information in the form it had been requested.

A requester asked for information, some of which did not exist in a "paper record". Records in the form requested by the appellant could be created from information stored in files or produced from information stored in computer databases. There was no issue involved in granting access to the information held by the institution — no exemptions applied to exclude it — but the Ministry took the position that they were under no obligation to "create" a record from information contained in their computer database.

To provide the appellant with access to the requested information that was stored in paper files, a manual search, followed by collation, would have been necessary. However, providing him with the information stored in the computer database would have necessitated a computerized search and subsequent record production.

The Commissioner found that the term "record", as defined in subsection 2(1) of the *Act*, encompasses two types of recorded information and the duty of the institution differs according to which part of the definition of "record" applies.

In cases where a request is for information that currently exists, either in whole or in part, in a recorded format different from the format asked for by the requester, the institution has the responsibility to advise the requester of what records exist. It is then up to the requester to decide whether or not to obtain these related records and sort through and organize the information into the desired format.

The *Act* gives the requester a right (subject to the exemptions contained in the *Act*) to the "raw material" which would answer all or part of a request but, subject to special provisions which apply only to information stored on computer, the institution is not required to organize this information into a particular format before disclosing it to the requester.

With respect to computer-generated information, when the request relates to information that does not currently exist in the form requested, but is capable of being produced from a machine-readable record, the *Act* imposes additional obligations on institutions. The *Act* requires the institution to create this type of record, "subject to regulations", i.e., providing that the process of production would not unreasonably interfere with the operations of the institution. What constitutes an "unreasonable interference" is a matter which must be considered on a case-by-case basis, but it is clear that the Regulation is intended to impose lim-

its on the institution's responsibility to create a new record.

### **Investigations arising from appeals**

During the mediation stage of an appeal, the Compliance Branch may be asked to conduct a formal investigation of an institution's practices and procedures. In 1989, 37 such investigations were completed as the result of an appeal to the Commissioner's Office.

Some of the principal reasons for such investigations were claims by institutions that the record sought did not exist, or could not be located, or claims by a requester that an institution had failed to provide all the records requested. In some instances, it was found that the institution had maintained inadequate record-keeping practices. However, where a requester believed more records existed than were disclosed, it was often found no additional records did, in fact, exist.

### **Investigations arising from complaints**

The Compliance Branch also investigates complaints from the public alleging that someone's privacy has been invaded, or that an institution has breached a provision of the *Act*. In 1989, 38 such complaints were received. In one instance, it was found that the institution had in fact contravened the *Act*, when it disclosed publicly that an individual had made a request to the institution under the *Act*.

The investigation's findings referred back to Order 27 which had concluded that a requester's name can be considered personal information if its disclosure would also disclose the fact that a request had been made and the nature of the request. A similar finding was made with respect to another institution when it referred to a requester's name in a court proceeding.

The Compliance Branch also conducts investigations when the media has identified what appears to be a breach of the *Act*. For example, a Toronto newspaper printed a story that an institution had transmitted by fax machine a

letter containing personal information. The letter contained an individual's name and AIDS-related personal information about the individual. The transmission was sent to the wrong destination. Intended for the individual's solicitor, it was sent to the legal counsel of a private company.

While in this instance the misdirection of a fax message was accidental, it did raise serious security and procedural questions about the use of fax machines as a way of transmitting personal information. To ensure that this type of incident did not recur, the Commissioner's Office developed fax guidelines to protect personal information from unauthorized disclosure.

In another incident reported in the media, it was discovered that personal information from an institution had been found in a garbage bag outside the institution's premises. The Compliance Branch found that the institution had not developed formal procedures for the destruction of its records, though it was working on such procedures at the time. The Branch is currently reviewing the procedures developed by the institution.

The Compliance Branch has also reviewed various institutions' policies and procedures for compliance with the *Act*. These reviews have, for the most part, been initiated by the institution. However, orders or investigations by the Commissioner's office have resulted in requests to institutions to develop new policies and procedures, or to enhance existing practices to comply with the *Act*.

Such activities have included reviews of: Ontario Provincial Police regulations governing the retention and destruction of records; proposed data policy and security standards of the Ministry of Community and Social Services; the Thames Valley Addiction Assessment Referral Centre's policy regarding client access to files; Georgian College's records management practices and subsequent guidelines; and



the Ministry of the Solicitor General's records maintenance manual.

### Commissioner's Recommendations

In addition to the mandatory provision of Orders, the Commissioner has made several recommendations as to practices of institutions which have a direct impact on their ability to respond appropriately to the demands of the *Freedom of Information and Protection of Privacy Act*, 1987.

One such recommendation was included in Order 45, in which case an appellant had applied for all records pertaining to a complaint he had made about an agency. The institution had identified a number of records and had granted full access to them. However, the appellant believed not all of the records responding to his request had been located, since correspondence he had sent to the institution (copies of which he had kept) were not included in the records the institution produced from its search.

The Commissioner assigned a Compliance Investigator to review the records management system of the institution. Although no further records were found and the appeal was dismissed, the Commissioner made several recommendations regarding the institution's record-keeping system. If these are followed, they will assist the institution in keeping track of records in its custody or control, and in locating them within a reasonable period of time in response to a request.

A related issue of access to records and the importance of good records-management practices arose in a case where the requester sought records that had been transferred from a ministry to the Provincial Archives of Ontario. The Archives of Ontario advised the appellant that access could not be provided by them because the record could not be located. On the basis of an independent investigation conducted by a Compliance Investigator, and the representations submitted by the Archives, the Commissioner was satisfied that the Archives

had taken all reasonable steps to locate the requested record (Order 59).

Numerous boxes of files and records are transferred continuously from ministries and agencies of the Provincial Government to the Provincial Archives. Often these files are not accompanied by an "index" or "list of contents", detailing what files are contained in the boxes and how they are organized, or if these lists do exist, they are sometimes inaccurate or incomplete.

The Archives lacks the manpower to inventory or verify the contents of the thousands of boxes of transferred records that end up in their custody and control. Without a clear and accurate inventory provided to them by the transferring institution, it is virtually impossible for the Archives to locate records.

Improvements in records management systems employed by all institutions of the Provincial Government should be one of the major long-term benefits of the *Act*. The Commissioner acknowledges that the introduction of these new practices may be complicated, time consuming and, as a result, costly. However, the fundamental new rights of access to records held by institutions and protection of the personal privacy of individuals named in records provided to the public by the *Act* will continue to be compromised unless and until adequate records-management practices have been implemented by all government institutions.

The public has the right to expect that each institution knows what records it has in its custody or control and where these records are located, so that they can be retrieved as required and a decision made as to any applicability of the exemption sections of the *Act*. Effective records management systems are important for every institution, but they are absolutely vital for the Archives of Ontario.



However, the Archives of Ontario - despite its best efforts and intentions - is having significant difficulties in carrying out its statutory mandate as the Ontario Government's custodian of historical information, without adequate systems to ensure the proper maintenance, retrieval, storage and disposition of the records under its control.

The Archives need adequate resources in order to properly do the job assigned to it and in order for it to properly address its responsibilities under the *Freedom of Information and Protection of Privacy Act, 1987*. The Commissioner urged the Legislative Assembly to address the concerns of the Archivist seriously and provide funding for the resources needed to properly implement its mandate.

## SECTION 59: OTHER ACTIVITIES

### Commissioner's Comments on Proposed Legislation and Programs

The Commissioner is given authority to comment on the privacy protection implications of proposed legislative schemes or government programs. Several pieces of legislation introduced in the Legislature prompted comment by the Commissioner's Office in 1989, including the *Freedom of Information and Protection of Privacy Amendment Act, 1989*, and the *Municipal Freedom of Information Statute Law Amendment Act, 1989*. The Commissioner's Office participated in the hearings when the proposed legislation was before the Standing Committee on the Legislative Assembly.

The Commissioner's Office also participated in the hearings conducted by the Standing Committee on the Administration of Justice on Bill 49, the *Municipal Freedom of Information and Protection of Privacy Act, 1989*. In addition, comments were also made with respect to Bill 86, the *Unclaimed Intangible Property Act, 1989* and the *Independent Health Facilities Act*.

To ensure that the Commissioner's Office can respond appropriately to the privacy implications in proposed government legislation and programs, it has instituted an internal process that reviews all legislation tabled in the Legislature, identifies those bills that may have privacy implications, and prepares an analysis and response. The Commissioner's comments are then sent to the minister responsible for the legislation.

### Privacy Policy Development

In 1989, several issues arose that, in the opinion of the Commissioner's Office, required the development of guidelines for the public sector. The first involved the implications for privacy protection in using fax machines for transmitting personal information. Guidelines were developed in response to an incident, referred to earlier in this report, in which a government institution accidentally transmit-

ted sensitive medical information to the wrong fax machine. The guidelines recommend procedures to follow in handling the transmission of personal information by fax machines.

The other issue was AIDS in the workplace. The Commissioner's Office felt that it was important to develop guidelines in this area given the serious privacy implications of unwarranted disclosure of AIDS-related personal information. **HIV/AIDS in the Workplace** used the principles of the *Freedom of Information and Protection of Privacy Act, 1987*, to develop policy guidelines for government institutions and other interested parties to follow in handling this sensitive personal information in the workplace.

### Public Outreach

As part of its mandate, the Commissioner's office is responsible for ensuring public awareness of the Act, to educate individuals and institutions about their rights and responsibilities with respect to freedom of information and protection of privacy. In this capacity, the Commissioner and staff members spoke to a number of groups during the year including:

The Institute of Public Administration, the Ontario Association of Student Financial Administrators, the American Society of Access Professionals, the City of London, the Canadian Institute of Law and Medicine, the Association of Records Managers and Administrators, the Ontario Securities Commission, the Ontario Psychological Association, the Ryerson School of Journalism, the Canadian Life and Health Insurance Association, the University of Western Ontario, Riley Information Services, the Association of Local Official Health Agencies, the Municipal Information Systems Association, the Association of Municipal Clerks and Treasurers of Ontario, the City of Toronto, the Ontario System Council, the Canadian Information Processing Society, the Council on Government Ethics and Lobbying, the Canadian Institute of Management,

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the Law Society of Upper Canada, and the Professional Credit Association.

### Telephone Tracking

The agency has established a toll-free telephone number which members of the public can use to obtain information regarding the operation of the *Act* and the work of the Commissioner's Office.

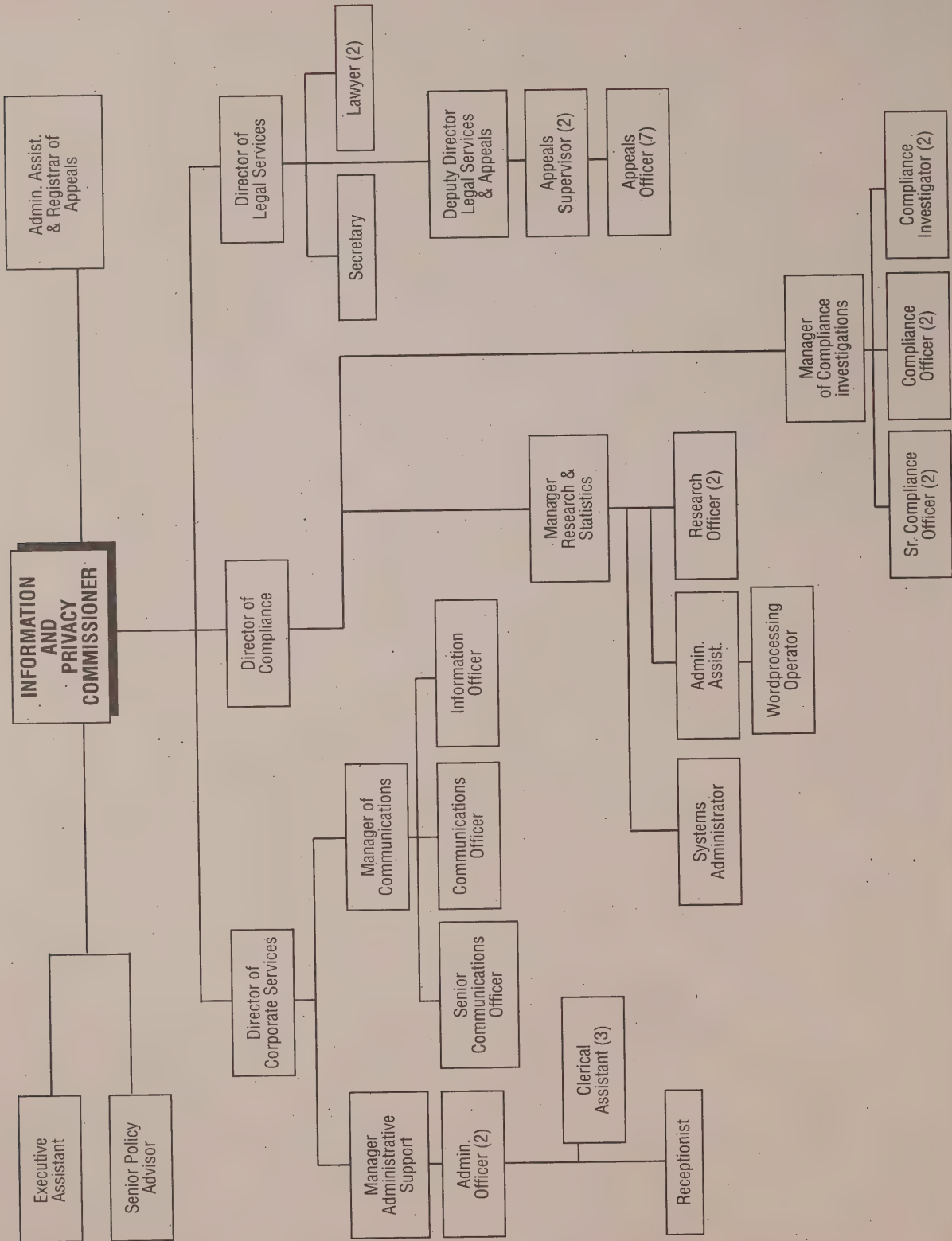
During 1989, a total of 26,028 telephone calls were received by the Commissioner's Office. Of these calls, 1,813 calls related to freedom of information and protection of privacy. The majority of callers, 83.4 per cent, requested general information about the *Act*; 5.8 per cent requested information about the appeal process; 4.4 per cent had privacy concerns, 0.1 per cent asked for legal interpretations and the remaining 6.3 per cent requested procedural guidance.



## ORGANIZATION CHART

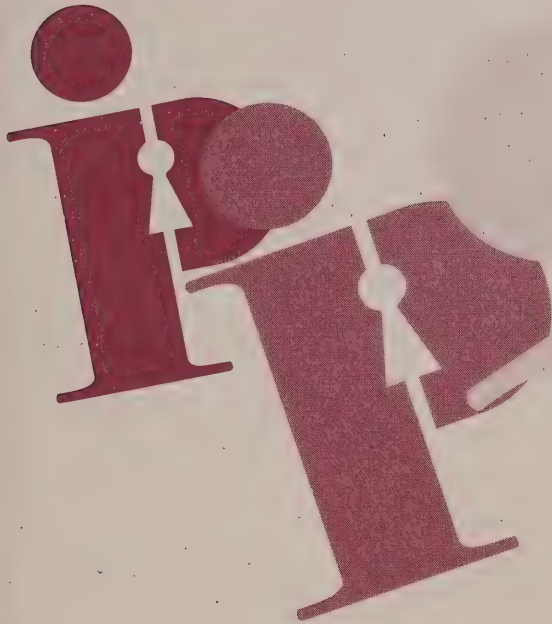






## **FINANCIAL STATEMENTS**

### **1988 - 89**







OFFICE OF THE PROVINCIAL AUDITOR  
BUREAU DU VÉRIFICATEUR PROVINCIAL

Box 105, 15th Floor, 20 Dundas St. West  
Toronto, Ontario M5G 2C2

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Toronto (Ontario) M5G 2C2

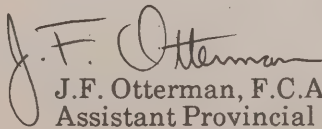
(416) 974-9866 Télécopieur (416) 324-7012

To the Information and Privacy Commissioner  
and to the Speaker of the Assembly.

I have examined the statement of expenditure of the Office of the Information and Privacy Commissioner for the year ended March 31, 1990. My examination was made in accordance with generally accepted auditing standards, and accordingly included such tests and other procedures as I considered necessary in the circumstances.

In my opinion, this financial statement presents fairly the expenditure of the Office of the Information and Privacy Commissioner for the year ended March 31, 1990 in accordance with the accounting policies described in note 2 to the financial statement applied on a basis consistent with that of the preceding year.

Toronto, Ontario,  
May 14, 1990.

  
J.F. Otterman, F.C.A.,  
Assistant Provincial Auditor.





**OFFICE OF THE INFORMATION AND  
PRIVACY COMMISSIONER**

**Financial Statement  
for the year ended March 31, 1990**

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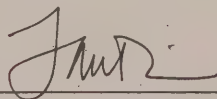
OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

Statement of Expenditure  
for the year ended March 31, 1990  
(Note 3)

	1990 \$	1989 \$
Salaries and wages	2,105,291	1,331,701
Employee benefits (note 4)	263,774	154,496
Transportation and communication	89,751	64,599
Services	573,949	453,121
Supplies and equipment	<u>364,174</u>	<u>398,282</u>
	<u>3,396,939</u>	<u>2,402,199</u>

See accompanying notes to financial statement.

Approved:



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Executive Director

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## **OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER**

### **Notes to Financial Statement March 31, 1990**

#### **1. GENERAL**

The Information and Privacy Commissioner is responsible for ensuring that Ontario government institutions comply with the Freedom of Information and Protection of Privacy Act, 1987 and apply the standards of privacy protection set out in the Act. As Commissioner, he may review decisions made by government institutions where access to information has been denied to a member of the public. Upon investigating the circumstances of the appeal, he has the final authority to deny or to order the disclosure of the requested information.

#### **2. SIGNIFICANT ACCOUNTING POLICIES**

##### **(a) Basis of accounting**

The Office uses a cash basis of accounting modified to allow an additional 30 days to pay for debts incurred during the period just ended.

##### **(b) Fixed assets**

Expenditures on fixed assets are expensed in the year of acquisition.

#### **3. EXPENDITURE**

Expenses are paid out of moneys appropriated therefor by the Legislature of the Province of Ontario.

#### **4. PENSION PLAN**

The Office of the Information and Privacy Commissioner provides pension benefits for its permanent employees through participation in the Public Service Pension Fund established by the province of Ontario. Pension benefits for the Information and Privacy Commissioner are provided through the Legislative Assembly Retirement Allowance Account. The Office's share of contributions to the Fund and Account during the year was \$116,800 (1989 - \$79,100) and is included in employee benefits in the Statement of Expenditure.

1. GENERALITES

Le commissaire à l'information et à la protection de la vie privée veille à ce que les diverses institutions du gouvernement de l'Ontario se conforment à la Loi de 1987 sur l'accès à l'information et la protection de la vie privée et respectent les normes de protection de la vie privée énoncées dans ladite loi. A titre de commissaire, il peut étudier les décisions prises par lesdites institutions qui refusent à un particulier l'accès à des renseignements. Après examen des circonstances de l'appel, il a le pouvoir final de refuser ou d'ordonner la divulgation des renseignements demandés.

2. PRINCIPES COMPTABLES IMPORTANTS

a) Méthode de comptabilité

Le Bureau utilise une méthode de comptabilité de caisse modifiée permettant une prolongation de 30 jours pour acquitter les dettes engagées au cours de la période qui vient de se terminer.

b) Immobilisations

Les dépenses en immobilisations sont imputées à l'exercice au cours duquel elles sont engagées.

3. DEPENSES

Les dépenses sont acquittées à même les fonds affectés par l'Assemblée législative de l'Ontario.

4. REGIME DE RETRAITE

Le Bureau du commissaire à l'information et à la protection de la vie privée offre des rentes de retraite à ses employés permanents en leur permettant de participer à la Caisse de retraite des fonctionnaires établi par la province de l'Ontario. Les rentes de retraite pour le commissaire à l'information et à la vie privée sont offertes par le compte des allocations de retraite des députés à l'Assemblée législative. Les cotisations versées par le Bureau aux dit Fonds, Caisse et compte au cours de l'année s'élèvent à 116 800 \$ (1989 - 79 100 \$) et fait partie des avantages sociaux des employés dans l'état des dépenses.

BUREAU DU COMMISSAIRE A L'INFORMATION ET A  
LA PROTECTION DE LA VIE PRIVEE

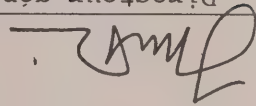
Etat des dépenses  
pour l'année terminée le 31 mars 1990  
(note 3)

1990	1989
\$	\$
Salaires et traitements	2 105 291
Avantages sociaux (note 4)	263 774
Transport et communications	89 751
Services	573 949
Fournitures et matériel	364 174
	398 282
	2 402 199

Voir les notes afférentes à l'état financier.

Approuvé par :

Directeur général





BUREAU DU COMMISSAIRE A L'INFORMATION ET A LA  
PROTECTION DE LA VIE PRIVEE

Etat financier  
pour l'année terminée le  
31 mars 1990





OFFICE OF THE PROVINCIAL AUDITOR  
BUREAU DU VERIFICATEUR PROVINCIAL

Box 105, 15th Floor, 20 Dundas St. West	C.P. 105, 20, rue Dundas ouest, 15 <sup>e</sup> étage
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Au commissaire à l'information et à la protection de la vie privée et au président de l'Assemblée législative

J'ai vérifié l'état des dépenses du Bureau du commissaire à l'information et à la protection de la vie privée pour l'année terminée le 31 mars 1990. Ma vérification a été effectuée conformément aux normes de vérification généralement reconnues et a comporté, par conséquent, les sondages et autres procédés que j'ai jugés nécessaires dans les circonstances.

A mon avis, cet état financier présente fidèlement les dépenses du Bureau du commissaire à l'information et à la protection de la vie privée pour l'année terminée le 31 mars 1990, selon les principes comptables décrits à la note 2 de l'état financier appliqués aux conditions compatibles avec ceux de la période de l'année précédente.

Le vérificateur provincial adjoint,

J. F. Otterman, F.C.A.

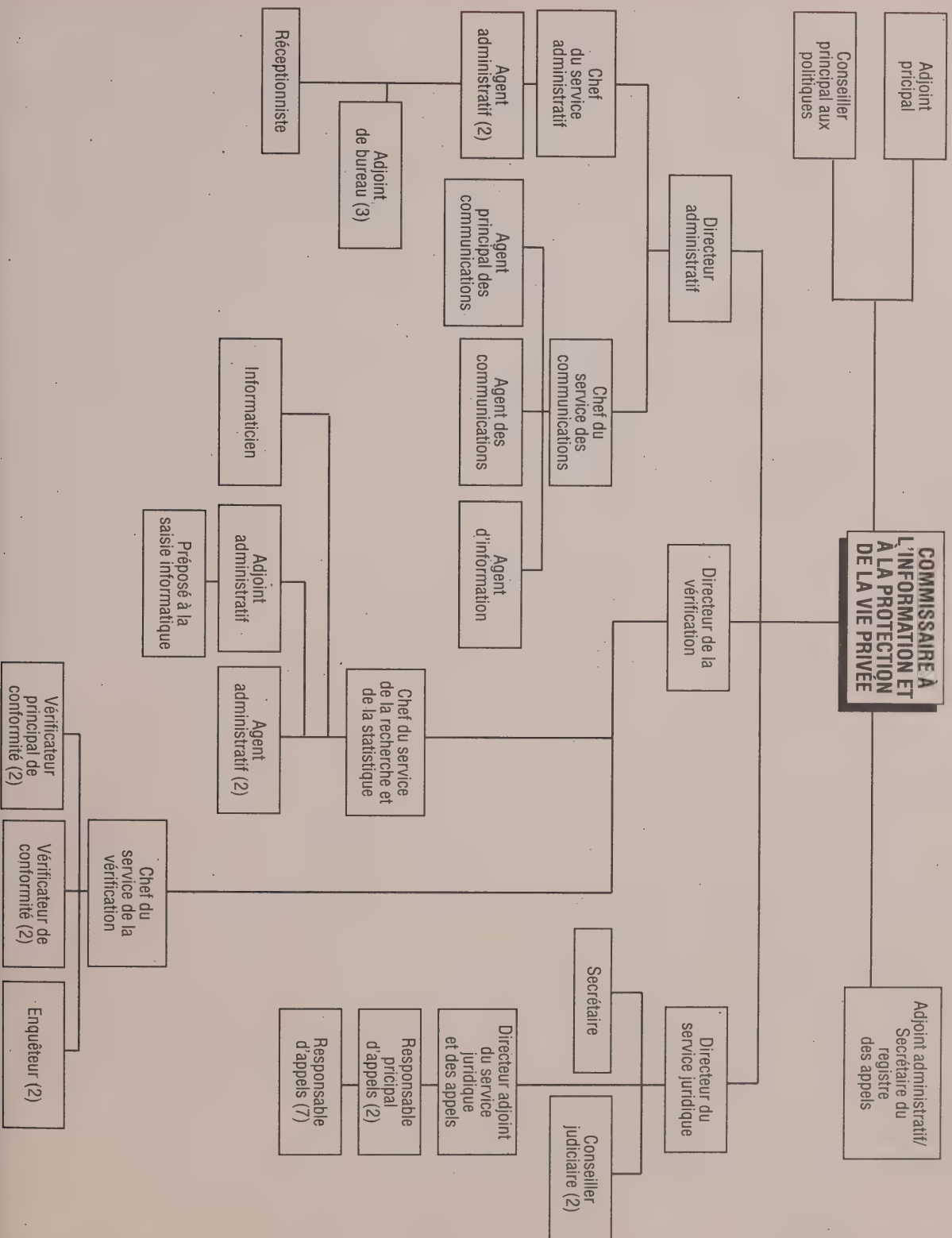
Toronto (Ontario)  
Le 14 mai 1990





**ÉTATS FINANCIERS  
1988 - 89**





# ORGANIGRAMME



gie de l'Ontario, Ecole de journalisme Ryerson, Association canadienne des compagnies d'assurances de personnes, Université Western Ontario, Riley Information Services, Association of Local Official Health Agencies, Municipal Information Systems Association, L'Association des Secrétaires et Trésoriers Municipaux de l'Ontario, Ville de Toronto, Ontario System Council, Association canadienne de l'Informatique, Council on Government Ethics and Lobbying, Institut canadien de gestion, Société du barreau du Haut-Canada, Professional Credit Association.

### Recherche au téléphone

L'organisme a fait installer un numéro de téléphone sans frais que les citoyens peuvent composer pour obtenir des renseignements concernant l'application de la loi et les travaux du bureau du commissaire.

En 1989, le bureau du commissaire a reçu 26 028 appels téléphoniques, dont 1 813 en rapport avec l'accès à l'information et la protection de la vie privée. La majorité des appels, soit 83,4 pour 100, étaient des demandes de renseignements généraux au sujet de la loi, 5,8 pour 100 demandaient des renseignements sur le processus d'appel, 4,4 pour 100 avaient trait à la protection de la vie privée, 0,1 pour 100 demandaient des interprétations juridiques et les 6,3 pour 100 restants demandaient des conseils sur la procédure.

## Commentaires du commissaire sur les projets de loi et de programmes

Le commissaire est habilité à faire des commentaires sur l'incidence des projets législatifs ou des programmes gouvernementaux proposés sur la protection de la vie privée. Plusieurs projets de loi déposés à l'Assemblée législative ont donné lieu à un commentaire du bureau du commissaire en 1989, notamment la Loi de 1989 modifiant la Loi sur l'accès à l'information et la protection de la vie privée et la Loi de 1989 modifiant des lois concernant l'accès à l'information municipale. Le bureau du commissaire a participé aux audiences du Comité permanent de l'Assemblée législative sur les projets de loi mentionnés.

Le bureau du commissaire a également participé aux audiences du Comité permanent de l'administration de la justice sur le projet de loi 49, Loi de 1989 sur l'accès à l'information municipale et la protection de la vie privée. Il a également présenté des commentaires au sujet du projet de loi 86 intitulé Loi de 1989 sur les biens matériels non réclamés, et de la loi intitulée Loi de 1988 sur les établissements de santé autonomes.

Pour faire en sorte que le bureau du commissaire puisse réagir comme il convient à l'incidence des projets législatifs et des programmes gouvernementaux proposés sur la protection de la vie privée, ce bureau a institué un processus interne qui examine tous les textes législatifs déposés à l'Assemblée législative, repère les projets de loi qui peuvent avoir une incidence sur la vie privée et rédige une analyse et une réponse. Les commentaires du commissaire sont alors envoyés au ministre responsable du projet de loi.

## Elaboration d'une politique de protection de la vie privée

En 1989, plusieurs questions ont surgi qui, de l'avis du bureau du commissaire, requièrent l'élaboration de directives pour le secteur public. La première question concerne l'incidence

## Rayonnement dans la population

L'autre question est celle du SIDA en milieu de travail. Le bureau du commissaire a estimé qu'il était important d'élaborer des directives dans ce domaine, étant donné les graves incidences sur la vie privée d'une divulgation indue de renseignements personnels reliés au SIDA. Le VIH et le Sida en milieu de travail se sert des principes de la Loi de 1987 sur l'accès à l'information et la protection de la vie privée pour élaborer des directives de politique que les institutions publiques et autres parties intéressées devraient suivre dans le traitement de ces renseignements personnels délicats en milieu de travail.

sur la protection de la vie privée de l'utilisation d'un télécopieur pour la transmission de renseignements personnels. Le bureau a élaboré des directives en réponse à un incident (que nous avons mentionné antérieurement) dans lequel une institution gouvernementale avait accidentellement transmis des renseignements médicaux délicats à un mauvais télécopieur. Les directives recommandent des procédures à observer en matière de transmission de renseignements personnels par télécopieur.

Dans le cadre de son mandat, le bureau du commissaire est tenu de sensibiliser la population à la loi, d'éduquer les particuliers et les institutions au sujet de leurs droits et de leurs responsabilités en matière d'accès à l'information et de protection de la vie privée. À ce titre, le commissaire et des membres de son personnel se sont adressés à un certain nombre de groupes au cours de l'année, notamment :

L'Institut d'administration publique, Ontario Association of Student Financial Administrators, American Society of Access Professionals, Ville de London, Canadian Institute of Law and Medicine, Association des gérants et administrateurs, gestion des documents, Commission des valeurs mobilières de l'Ontario, Association de psycholo-



tion, et des observations formulées par les Archives, le commissaire fut convaincu que les Archives avaient pris toutes les mesures raisonnables pour localiser le document demandé (ordonnance n° 59).

De nombreuses boîtes de dossiers et de documents sont transférées continuellement aux Archives publiques de l'Ontario par des ministères et organismes du gouvernement provincial. Il arrive souvent que ces dossiers ne soient pas accompagnés d'un « répertoire » ou d'une « liste » précisant le contenu des boîtes et la façon dont ce contenu est classé ou, si ces répertoires existent, ils sont parfois inexacts ou incomplets.

Les archives n'ont pas le personnel nécessaire pour inventorier ou vérifier le contenu des milliers de boîtes de dossiers transférés dont elles finissent par avoir la garde ou le contrôle. Sans un inventaire clair et précis fourni par l'institution qui est l'auteur du transfert, il est quasi impossible pour les archives de trouver des documents.

Les améliorations apportées aux systèmes de gestion des documents employés par toutes les institutions du gouvernement provincial devaient être parmi les plus grands avantages de la loi à long terme. Le commissaire reconnaît que l'instauration de ces nouvelles pratiques risque d'être compliquée, longue et donc coûteuse. Toutefois, les nouveaux droits fondamentaux d'accès aux documents détenus par les institutions et de protection de la vie privée des particuliers nommés dans les documents que la loi confère à la population continueront d'être compromis tant que toutes les institutions publiques n'auront pas mis en oeuvre des pratiques satisfaisantes de gestion des documents.

Le public a le droit de s'attendre à ce que chaque institution sache quels sont les documents dont elle a la garde ou le contrôle et l'endroit où ces documents sont situés de sorte qu'ils puissent en être extraits au besoin et qu'une décision soit prise quant à l'application éventuelle des articles de la loi énonçant une

Toutefois, malgré leurs efforts et leurs intentions, les Archives publiques de l'Ontario ont de grosses difficultés à s'acquitter de leur mandat d'origine législative qui est celui de garder des données historiques du gouvernement de l'Ontario sans des systèmes adéquats leur permettant d'assurer la conservation, l'extraction, le stockage et la disposition convenables des documents dont elles ont le contrôle.

Les Archives publiques ont besoin de ressources suffisantes leur permettant de s'acquitter comme il convient de la tâche qui leur est assignée et assumer dûment leurs responsabilités aux termes de la Loi de 1987 sur l'accès à l'information et la protection de la vie privée. Le commissaire a pressé l'Assemblée législative de se pencher sérieusement sur les préoccupations de l'archiviste et de fournir le financement des ressources nécessaires pour bien s'acquitter de son mandat.

exception. L'existence de bons systèmes de gestion des documents est importante pour chaque institution, mais elle est absolument vitale pour les Archives publiques de l'Ontario.



## Recommandations du commissaire

En plus des ordonnances qu'il doit rendre de par son mandat, le commissaire a fait plusieurs recommandations visant les pratiques d'institutions qui ont une répercussion directe sur leur aptitude à bien réagir aux exigences de la Loi de 1987 sur l'accès à l'information et la protection de la vie privée.

Une recommandation de ce genre est insérée dans l'ordonnance n° 45. Dans cette cause, l'appelant avait demandé accès à tous les documents ayant trait à une plainte qu'il avait déposée au sujet d'un organisme. L'institution avait repéré un certain nombre de documents auxquels elle avait accordé un accès sans réserve. L'appelant estimait toutefois que l'on n'avait pas trouvé la totalité des documents correspondant à sa demande, étant donné que les pièces de correspondance qu'il avait envoyées à l'institution (et dont il avait conservé une copie) ne faisaient pas partie des documents recueillis par l'institution dans le cadre de sa recherche.

Pour faire en sorte que ce genre d'incident ne se reproduise plus, le bureau du commissaire a élaboré des directives en matière de télécopieur pour protéger les renseignements personnels d'une divulgation non autorisée.

Dans un autre incident dont les médias ont rendu compte, on a découvert que l'on avait trouvé des renseignements personnels d'une institution dans un sac à ordures hors des locaux de l'institution. La direction de l'observation a constaté que l'institution n'avait pas formulé de procédures en règle en matière de destruction de ses documents, même si, à l'époque, elle avait entrepris de le faire. La direction examine actuellement les procédures élaborées par cette institution.

La direction de l'observation a également examiné diverses politiques et procédures d'institutions en matière d'observation de la loi. Ces examens ont eu lieu, pour la plupart, à l'initiative de l'institution. Des ordonnances ou des enquêtes du bureau du commissaire ont toutefois eu pour résultat l'envoi de demandes à des institutions visant à élaborer de nouvelles politiques et procédures ou à perfectionner des pratiques en vigueur pour mieux observer la loi.

Ce genre d'activités a entraîné notamment l'examen des règlements de la Police provinciale de l'Ontario régissant la conservation et la destruction de documents; l'examen du projet de normes de politique et sécurité des données du ministère des Services sociaux et communautaires; l'examen de la politique de Thames Valley Addition Assessment Referral Centre concernant l'accès des clients aux fichiers; l'examen des pratiques de gestion des documents et des directives subséquentes du collège Georgian; et l'examen du manuel de tenue à jour des dossiers du ministère du Solliciteur général.

Une question connexe touchant l'accès aux documents et l'importance de bonnes pratiques de gestion des documents s'est présentée dans une cause où l'auteur de la demande sollicitait des documents qu'un ministère avait transmis aux Archives publiques de l'Ontario. Les Archives firent savoir à l'appelant qu'elles ne pouvaient donner accès aux documents parce qu'elles n'arrivaient pas à les trouver. À la suite d'une recherche indépendante menée par un enquêteur de l'observa-

nements connexes, faire un tri et organiser les renseignements selon le format désiré.

La loi donne à l'auteur de la demande un droit (sous réserve des exceptions visées par la loi) à la «matière première» qui répond, en totalité ou en partie, à la demande, mais, compte tenu des dispositions particulières qui s'appliquent uniquement aux renseignements stockés dans un ordinateur, l'institution n'est pas tenue d'organiser ces renseignements selon un format particulier avant de les divulguer à l'auteur de la demande.

Quant aux données produites par ordinateur, si la demande vise des renseignements qui n'existent pas, à ce moment-là, sous la forme demandée, mais qui peuvent être produits à partir d'un document lisible par une machine, la loi impose des obligations supplémentaires aux institutions. Elle exige que l'institution crée ce genre de document «sous réserve des règlements», c'est-à-dire à condition que le processus de production n'entraîne pas indûment les activités de l'institution. Quant à préciser ce qu'est une «entraîne induite», c'est une question à résoudre selon chaque cas d'espèce, mais il est clair que le règlement vise à imposer des restrictions à l'obligation de l'institution de créer un nouveau document.

### Enquêtes par suite d'un appel

Au cours du stade de médiation d'un appel, la direction de l'observation peut être priée de mener une enquête en règle des pratiques et procédures d'une institution. En 1989, elle a procédé à 37 enquêtes de ce genre par suite d'un appel interjeté devant le bureau du commissaire.

Parmi les principaux motifs de ce genre d'enquêtes, il faut citer les allégations de la part de l'institution que le document recherché n'existe pas ou qu'on n'a pas pu le trouver, ou les allégations de la part de l'auteur d'une demande selon lesquelles l'institution n'a pas fourni tous les documents demandés. Dans certains cas, on a constaté que l'institution avait des pratiques insuffisantes en matière de

### Enquêtes par suite de plaintes

tendue de dossiers. Toutefois, lorsque l'auteur d'une demande croyait qu'il existait plus de documents que ceux qui lui avaient été communiqués, on a souvent constaté qu'il n'existait pas d'autres documents de ce genre.

La direction de l'observation enquête aussi sur les plaintes du public alléguant qu'il y a eu atteinte à la vie privée de quelqu'un ou qu'une institution a enfreint une disposition de la loi. En 1989, la direction a reçu 38 plaintes de ce genre. Dans un cas, on a constaté que l'institution avait effectivement contrevenu à la loi lorsqu'elle avait divulgué publiquement qu'un particulier avait fait une demande à cette institution en vertu de la loi.

Les constatations de l'enquête ont renvoyé à l'ordonnance n° 27 qui avait conclu que l'on peut considérer le nom de l'auteur d'une demande comme constituant un renseignement personnel si sa divulgation entraîne la divulgation de l'existence et de la nature de la demande. Une constatation analogue a été faite à l'égard d'une autre institution lorsqu'elle a fait mention du nom de l'auteur d'une demande dans le cadre d'une instance judiciaire.

La direction de l'observation mène également des enquêtes lorsqu'un média décèle ce qui semble être une infraction à la loi. Par exemple, un journal torontois a imprimé un article déclarant qu'une institution avait transmis par télécopieur une lettre renfermant des renseignements personnels. La lettre renfermait le nom d'un particulier et des renseignements personnels en rapport avec le SIDA, qui le concernaient. Le message a été envoyé à un mauvais destinataire. Au lieu de l'envoyer à l'avocat du particulier en question, il avait été envoyé à l'avocat d'une société fermée. Bien que, dans ce cas, l'envoi d'un message par télécopieur à une adresse erronée ait été accidentel, le cas soulevait de graves questions de sécurité et de procédure au sujet de l'utilisation d'un télécopieur comme moyen de transmission de renseignements personnels.

L'ordonnance n° 50 traite des responsabilités de l'institution lorsqu'elle reçoit une demande visant des renseignements qui n'existent pas à ce moment-là sous la forme demandée. La question est de savoir si l'institution est obligée de créer un document renfermant les renseignements demandés sous la forme demandée.

L'auteur d'une demande visait des renseignements dont certains n'existaient pas sous forme de «documents sur papier». Les documents sous la forme demandée par l'appelant pouvaient être créés à partir de l'information stockée dans des fichiers ou produits à partir de l'information stockée dans des bases de données informatiques. Le droit d'accès aux renseignements détenus par l'institution ne posait pas de problèmes, c'est-à-dire qu'on ne pouvait invoquer aucune exception pour l'interdire, mais le ministère avait adopté la position qu'il n'était pas tenu de «créer» un document à partir de l'information stockée dans sa base de données informatiques.

Pour donner à l'appelant un droit d'accès aux renseignements demandés stockés dans les fichiers sur papier, il aurait fallu procéder à une recherche manuelle suivie d'une collecte. Toutefois, pour fournir les renseignements stockés dans la base de données informatiques, il aurait fallu une recherche informatique suivie de la production d'un document.

Le commissaire a estimé que le terme «document», selon la définition du paragraphe 2 (1) de la loi, englobe deux genres de renseignements enregistrés, et le devoir de l'institution n'est pas le même selon que s'applique l'une ou l'autre partie de la définition du terme «document».

Dans les cas où la demande vise des renseignements déjà existants, en totalité ou en partie, sous un format enregistré différent de celui demandé par l'auteur de la demande, l'institution a l'obligation d'informer l'auteur de la demande de l'existence du document et de son format. Il incombe alors à l'auteur de la demande de décider s'il veut obtenir ces documents.

Une autre décision s'attache à une opinion inexacte, soutenue par de nombreuses institutions, selon laquelle la loi n'exige pas que l'institution examine les documents avant de rédiger la réponse à l'auteur de la demande et que l'envoi d'une estimation de frais constitue une réponse dans le délai de 30 jours impartis par la loi. L'ordonnance n° 81 a établi clairement que, dans la plupart des cas, l'institution doit examiner tous les documents susceptibles de répondre à la demande avant de répondre à l'auteur de la demande dans le délai stipulé de 30 jours.

Si l'institution n'accorde pas l'accès intégral, elle doit, dans sa lettre à l'auteur de la demande, décrire les documents en termes généraux, et indiquer l'article de la loi qu'elle invoque pour excuser les documents de la divulgation et ses motifs pour agir de la sorte. C'est seulement dans les cas où la production des documents à examiner serait excessive-ment coûteuse que l'institution peut prendre une décision provisoire en matière d'accès.

La décision provisoire de l'institution est de nature générale et ne constitue pas une décision finale quant à l'accès. La décision provisoire peut être prise après une consultation interne concernant le contenu probable du document ou après consultation d'un échantillon du document. Elle peut s'accompagner d'une demande de paiement au moins partiel des frais estimatifs de production des documents. La décision provisoire doit mettre l'auteur de la demande au courant du fait que des exceptions vont probablement s'appliquer et que la décision finale quant à l'accès n'a pas encore été prise.

La décision provisoire a pour effet de permettre à l'auteur de la demande de prendre une décision raisonnablement avertie quant à la poursuite de sa demande, compte tenu du coût à payer pour cela. Si l'auteur de la demande choisit de payer (ou a gain de cause dans un appel sur l'estimation de frais), l'institution doit produire les documents, les examiner et prendre sa décision finale quant à l'accès.



## Observation de la loi

### Appels

L'alinéa 58 (2) b) de la loi exige que le commissaire procède à une évaluation du degré d'observation par les institutions de la Loi de 1987 sur l'accès à l'information et la protection de la vie privée.

Les deux premières années d'application de la loi ont été une période d'apprentissage et de perfectionnement. La formation initiale donnée aux ministères et organismes du gouvernement provincial par le Conseil de gestion du gouvernement a fourni aux institutions une orientation quant à l'interprétation de leurs responsabilités telles que la loi les énonce. Cette orientation s'est étoffée à mesure que le commissaire publiait ses interprétations des responsabilités des institutions aux termes de la loi. Ces interprétations sont consignées dans les décisions ou ordonnances sur les appels et les recommandations du commissaire, qui peuvent se dégager d'une enquête sur des appels ou plaintes selon lesquelles une institution a manqué à ses obligations aux termes de la partie III de la loi qui traite de la collecte, de la conservation et de l'utilisation des renseignements personnels.

### Décisions rendues sur des appels

Les décisions rendues sur des appels peuvent renfermer des ordonnances de faire qui donnent une orientation de la part du commissaire sur l'interprétation des articles de la loi visant une exception. Ces décisions sont résumées à intervalles réguliers par le bureau du commissaire et elles sont publiées dans le Volume deux de ce rapport. Il reste que certaines des décisions qui définissent les obligations des institutions en matière de procédure, rendues elles aussi en 1989, concernent l'observation de la loi par les institutions. Ces décisions ont des conséquences de grande portée pour la marche courante des institutions dans le cadre de la loi. Par exemple, les ordonnances nos 38 et 99 traitent de la façon dont les institutions inter-

prérent les demandes. Souvent, les demandes sont ambiguës et n'indiquent pas clairement les documents dont l'auteur de la demande a besoin. Dans chacun de ces appels, l'auteur de la demande avait formulé sa demande en termes vagues. L'institution a entrepris des recherches dans un champ précis. Ne trouvant aucun des documents demandés, l'institution n'a pas demandé un complètement d'information à l'auteur de la demande pour l'aider dans ses recherches pas plus qu'elle ne l'a informé de l'étendue de ses recherches. Dans ses ordonnances, le commissaire a précisé clairement qu'une institution ne peut pas retrécir son champ de recherche de documents sans consulter (ou au moins informer) l'auteur de la demande.

Le commissaire a présenté trois réponses possibles qu'une institution pourrait donner à des demandes formulées en termes vagues. En premier lieu, elle pourrait choisir de répondre littéralement à la demande et d'effectuer une recherche des documents demandés à l'échelle de l'institution. En deuxième lieu, elle pourrait demander un complètement d'information à l'auteur de la demande pour qu'il précise le champ de recherche. Enfin, elle pourrait unilatéralement retrécir le champ de recherche mais, ce faisant, elle devrait indiquer à l'auteur de la demande les limites de sa recherche. Cette méthode contribuerait à prévenir les malentendus quant à la portée et à la nature de la recherche entreprise.

L'ordonnance n° 38 concerne également l'obligation de l'institution d'indiquer à l'auteur de la demande, au moins en termes généraux, les documents dont elle a la garde ou le contrôle et qui pourraient répondre à la demande. Saut si l'institution fait valoir son droit de refuser de confirmer ou de nier l'existence d'un document, ce qu'elle peut faire dans certaines circonstances précises, le commissaire indique que l'institution doit dans sa lettre de réponse informer l'auteur de la demande de l'existence des documents susceptibles de répondre à sa demande, même si elle refuse l'accès à ces documents.

TABLEAU 25 / GENRES D'AUTEURS DE DEMANDE PRENANT PART AUX APPELS

	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	TOTAL
Particuliers	226	245								471	62.2
Entreprise	48	43								91	12.0
Rechercheur	21	26								47	6.2
Média	19	34								53	7.0
Association	18	42								60	7.9
Autres	18	17								35	4.6
Total	350	407								757	100.0

\* Etant donné que, dans toutes les demandes de renseignements personnels et de rectification, l'auteur de la demande est un particulier ou son mandataire autorisé, tous les auteurs de demandes sont traités comme des particuliers.



1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	TOTAL	Nbre	%
Ordonnances	Décision de la personne respon- sable confirmée	63	54						117	46.4		
	Décision de la personne respon- sable confirmée	5	27						32	12.7		
	en partie											
	Décision de la personne respon- sable non confirmée	11	37						48	19.0		
<b>Total des cas avec ordonnance</b>												197
Autres cas	Retirés	6	6						12	4.8		
	Réglés	8	35						43	17.1		
	Total des autres cas	14	41						55			
	<b>Total des cas avec enquête</b>	93	159						252	100.0		

TABLEAU 22 / CAS RÉSOLUS : STADE AUQUEL L'APPEL A ÉTÉ RÉSOLU

	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	TOTAL	Nbre	%
Stade de la médiation	105	213								318	55,8		
Stade de l'enquête	93	159								252	44,2		
Total	198	372								570	100,0		

TABLEAU 23 / STADE DE LA MÉDIATION

	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	TOTAL	Nbre	%
Régie	87	179								266	83,6		
L'appelant a reçu un complément d'information	(43)	(106)								(149)			
L'explication de la loi a satisfait l'appelant	(44)	(73)								(117)			
Échappé à la compétence	7	0								7	2,2		
Retiré	10	28								38	11,9		
Abandonné	1	6								7	2,2		
Total	105	213								318	100,0		

TABLEAU 21 / GENRES DE DÉCISIONS AYANT FAIT L'OBJET D'UN APPEL \*

	1988	1989	1990	1991	1992
Refus d'accès partiel	111	131			
Refus d'accès total	87	133			
Documents inexistant	76	47			
Frais/estimation de frais	44	22			
Renseignements de tiers	15	8			
Prorogation du délai	10	28			
Mode d'accès	8	0			
Refus de confirmer ou de nier	6	6			
Rectification(s) refusée(s)	5	9			
Autres	17	45			
Total	379	429			

\* Le nombre total des décisions ayant fait l'objet d'un appel est supérieur au nombre total d'appel (Tableau 20A) étant donné que certains appels constituent plusieurs décisions. Les chiffres reportés ci-dessus indiquent le nombre de fois où chaque décision a fait l'objet d'un appel.

TABLEAU 20 / GENRES D'APPELS

	1988		1989	
	APPELS RECUS OU REPORTEE DE L'ANÉE PRÉCÉDENTE	APPELS RÉSOLUS	APPELS RECUS L'ANNÉE PRÉCÉDENTE	APPELS* RÉSOLUS
Documents généraux	259	143	310	283
Conseillements personnels	86	53	88	80
Rectifications	5	2	9	9
Total	350	198	407	372

\* Les appels résolus en 1989 ont été reçus en 1988 ou en 1989.

TABLEAU 19 / TOTAL DES RÉGLEMENTS DE TOUS LES APPELS

STADE DE LA MÉDIATION				STADE DE L'ENQUÊTE			
APPEL DE L'AUTEUR\ DE LA DEMANDE	Nbre	%	APPEL D'UN TIERS	Nbre	%	Abandonné	Total
Réglé	169	84.1	10	83.3	179	84.0	
L'appelant a reçu un complément d'information	(100)		(6)		(106)		
a satisfait l'appelant	(69)		(4)		(73)		
Echappé à la compétence	0	0.0	0	0.0	0	0.0	
Retiré	26	12.9	2	16.7	28	13.1	
	6	3.0	0	0.0	6	2.8	
	201	100.0	12	100.0	213	100.0	
<hr/>							
Ordonnances				Ordonnances			
Decision de la personne responsable confirmée	49	43.8	5	83.3	54	45.8	
Decision de la personne responsable confirmée en partie	26	23.2	1	16.7	27	22.9	
Decision de la personne responsable non confirmée	37	33.0	0	0.0	37	31.4	
Total des cas avec ordonnance	112	100.0	6	100.0	118	100.0	
<hr/>							
Autres cas				Autres cas			
Retirés	5	12.5	1	100.0	6	14.6	
Règles	35	87.5	0	0.0	35	85.4	
Total des autres cas	40	100.0	1	100.0	41	100.0	
<hr/>							
Total des cas avec enquête				Total des cas avec enquête			
152	-	-	7	-	159	-	
Total des cas résolus				Total des cas résolus			
353	-	-	19	-	372	-	



TABLEAU 18 / GENRES DE DÉCISIONS AYANT FAIT L'OBJET D'UN APPEL

	DOCUMENTS GÉNÉRAUX	RENSEIGNEMENTS PERSONNELS	TOTAL Nbre %
Refus d'accès partiel	77	54	131 30.5
Refus d'accès total	119	14	133 31.0
Documents inexistant	33	14	47 11.0
Frais/estimation de frais	22	0	22 5.1
Renseignements de tiers	7	1	8 1.9
Prorogation du délai	25	3	28 6.5
Mode d'accès	0	0	0 0.0
Refus de confirmer ou de nier	2	4	6 1.4
Rectification(s) refusée(s)	s.o.	9	9 2.1
Autres	38	7	45 10.5
Total	323	106	429 100.0

Remarque: Le nombre total des décisions ayant fait l'objet d'un appel est supérieur au nombre total d'appel (Tableau 20), étant donné que certains appels constituent plusieurs décisions. Les chiffres reportés ci-dessus indiquent le nombre de fois que chaque décision a fait l'objet d'un appel.

1988	1989	TOTAL des Appels
Appels	Appels	Appels
1	39	40
Services gouvernementaux		
Total		
25	21	46
Services sociaux et communautaires		
0	1	1
Comm. d'étude des services à l'enfance et à la famille		
0	1	1
Commission de révision de l'aide sociale		
Total		
25	23	48
Solliciteur général		
29	23	52
Total		
2	3	5
Tourisme et Loisirs		
0	4	4
Société des loteries de l'Ontario		
Total		
2	7	9
Transport		
12	4	16
Total		
12	4	16
Travail		
27	25	52
Comm. des accidents du travail		
11	19	30
Comm. des relations de travail de l'Ont.		
2	2	4
0	1	1
Tribunal d'appel des accidents du travail		
Total		
40	47	87
Trésor et Économie		
2	8	10
Société ontarienne du stade limitée		
2	25	27
Total		
4	33	37

Énergie Ontario Hydro	1988 Appels	1989 Appels	TOTAL des Appels	Environnement Société ontarienne de gestion des déchets	1988 Appels	1989 Appels	TOTAL des Appels
Total	8	6	14	13	2	4	17
Formation professionnelle	5	3	8	15	4	19	24
Industrie, Commerce et Technologie	11	5	16	8	3	11	19
Institutions financières	8	14	22	5	16	21	37
Logement	0	8	8	8	0	8	8
Procureur général	21	16	37	0	21	16	37
Revenu	6	3	9	6	3	9	15
Richesses naturelles	4	11	15	4	11	15	22
Santé	45	43	88	4	11	15	22
Conseil régional de santé de Toronto	0	1	1	8	0	8	8
Secrétariat du Conseil de gestion	2	2	4	21	16	37	54
Secrétariat des ressources humaines	0	1	1	8	0	8	8
Services correctionnels	59	33	92	11	5	16	22
Total	59	33	92	15	4	19	24

TABLEAU 17 / MINISTÈRES ET ORGANISMES IMPLIQUÉS DANS LES APPELS REÇUS

	1988	1989	TOTAL des appels
Affaires civiques	0	0	0
Comm. ont. des droits de la personne	3	14	17
<b>Total</b>	<b>3</b>	<b>14</b>	<b>17</b>
Affaires municipales	3	4	7
<b>Total</b>	<b>3</b>	<b>4</b>	<b>7</b>
Agriculture et Alimentation	17	3	20
<b>Total</b>	<b>17</b>	<b>3</b>	<b>20</b>
Bureau du Conseil des ministres	1	5	6
<b>Total</b>	<b>1</b>	<b>5</b>	<b>6</b>
Collèges et Universités	1	2	3
Collège Humbler - Etobicoke	0	1	1
Collège Northern - South Porcupine	0	1	1
Collège Seneca - North York	0	1	1
Collège Shendian - Oakville	0	12	12
Collège Sir Sanford Fleming - Peterborough	0	1	1
Collège St Clair - Windsor	0	1	1
<b>Total</b>	<b>1</b>	<b>19</b>	<b>20</b>
Condition féminine	0	2	2
<b>Total</b>	<b>0</b>	<b>2</b>	<b>2</b>
Consommation et Commerce	11	13	24
Régie des alcools de l'Ontario	2	1	3
<b>Total</b>	<b>13</b>	<b>14</b>	<b>27</b>
Culture et Communication	1	7	8
Archives publiques de l'Ontario	6	1	7
Fondation du patrimoine ontarien	0	8	8
<b>Total</b>	<b>7</b>	<b>16</b>	<b>23</b>
Développement du Nord et Mines	0	0	0
Comm. de transport Ontario Northland	0	1	1
<b>Total</b>	<b>0</b>	<b>1</b>	<b>1</b>
Education	8	3	11
<b>Total</b>	<b>8</b>	<b>3</b>	<b>11</b>

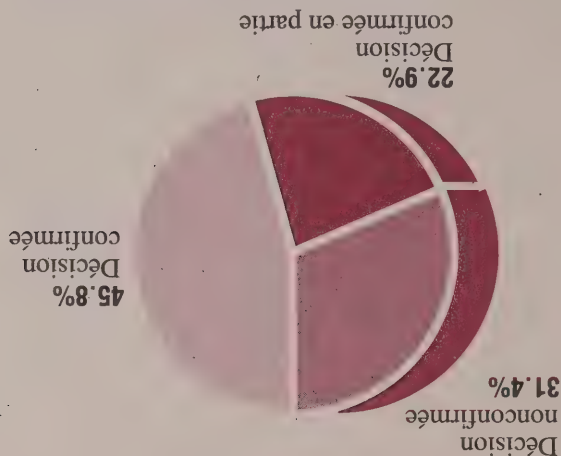
## Résolution sans ordonnance

En 1989, comme en 1988, plus de la moitié de tous les appels ont été résolus grâce à un règlement (Tableau 19). Cent-soixante-dix-neuf, soit 84 pour 100, ont été réglés parce que l'appelant a reçu un complément d'information ou qu'une nouvelle explication de la loi a dissipé ses craintes. Une autre tranche de 40 appels ont été retirés ou abandonnés.

## Résolution par ordonnance

Les 118 autres appels résolus en 1989 l'ont été grâce à une ordonnance rendue par le commissaire (Tableau 19). Dans 81 appels, la décision de la personne responsable a été confirmée en totalité ou en partie, tandis qu'elle ne l'a pas été dans 37 appels (Figure 2).

**Figure 2 / Décision résolue par ordonnance**



Les 118 appels résolus par ordonnance en 1989 ont, en fait, donné lieu à 102 ordonnances. La différence entre le nombre d'appels résolus par ordonnance et le nombre d'ordonnances vient de ce qu'une seule et même ordonnance peut régler plusieurs causes.

## Genres d'auteurs de demande

La loi n'exige pas des appelants qu'ils donnent des renseignements sur eux-mêmes lorsqu'ils

interjettent appel, mais le personnel du commissaire s'efforce de déterminer les diverses catégories d'appelants. Cette détermination est subjective et n'est présentée ici que pour donner une idée de la source des appels.

Sur les 407 appels reçus en 1989 ou reportés de l'année précédente, 207, soit 60,2 pour 100, ont été interjetés par des particuliers (Tableau 25). Cela représente le plus grand groupe d'appelants, ce qui s'explique en partie par le fait que tous les appels découlant de demandes de renseignements personnels sont considérés comme ayant été reçus de particuliers. Dans d'autres catégories, les représentants d'entreprises constituent le deuxième groupe en importance avec 43 appels, suivis par les associations avec 42 appels, les médias avec 34 appels, les chercheurs avec 26 appels et les autres auxquels sont attribués 17 appels.



## Statistiques relatives au processus d'appel

En 1989, 407 appels ont été interjetés devant le commissaire en vertu de la loi (Tableau 20), à savoir, 310, soit 76,2 pour 100, relativement à des demandes de documents généraux, 88, soit 21,6 pour 100, relativement à des demandes de renseignements personnels et les 9 autres, soit 2,2 pour 100, relativement à des demandes de rectification. Ce total représente une moyenne mensuelle de 33,9. De même, en 1989, 372 appels ont été résolus. Ils avaient été reçus en 1989 ou reportés de 1988. En moyenne, 31 appels ont été résolus chaque mois.

Le total de 407 appels interjetés en 1989 représente une augmentation par rapport aux 350 appels reçus en 1988, la première année de fonctionnement du bureau du commissaire (Tableau 20). Comme on l'a mentionné, la comparaison de deux années consécutives doit s'accompagner d'une certaine réserve, étant bien entendu que, même si la comparaison peut présenter un intérêt, il serait prématuré d'en tirer des conclusions.

### Genres de décisions ayant fait l'objet d'un appel

Certains des 407 appels visaient plusieurs décisions rendues par l'institution en cause. Au total, 429 décisions ont donné lieu à un appel (Tableau 18). Sur ce nombre, 326 (75,9 pour 100) étaient une réaction à la décision finale de l'institution, soit que celle-ci ait refusé l'accès au document, soit qu'elle ait refusé d'apporter une rectification au document, soit qu'elle ait refusé de confirmer ou de nier l'existence d'un document, soit qu'elle ait soutenu que le document n'existait pas. Le refus d'accès soit total, soit partiel représente respectivement 30,5 et 31 pour 100 de toutes les décisions ayant fait l'objet d'un appel.

Les 103 autres appels (24 pour 100) ont trait à une décision préliminaire rendue par l'institution, notamment des estimations de frais, des prorogations de délai ou la communication possible de renseignements de tiers. Ce

### Règlement des appels

L'objectif du commissaire est qu'une plus grande partie des appels soient réglés au stade de la médiation et non au terme du processus plus long aboutissant à l'émission d'une ordonnance. À mesure que grandit le nombre d'ordonnances couvrant une gamme plus large de circonstances, il devrait être possible d'atteindre cet objectif.

En 1989, 57,5 pour 100 des appels ont été résolus par voie de règlement et 31,7 pour 100 l'ont été au moyen d'une ordonnance (Tableau 19). En 1988, 48 pour 100 des appels ont été résolus et 39,9 pour 100 résolus au moyen d'une ordonnance. Bien que deux années soient insuffisantes pour indiquer une tendance à la diminution du nombre d'ordonnances, c'est un signe encourageant.

### Institutions particulières

La plupart des appels visaient des ministères (306, soit 75,2 pour 100), par opposition aux organismes (101, soit 24,8 pour 100) (Tableau 17). Les appels les plus nombreux visaient les ministères de la Santé (43) et des Services gouvernementaux (39). Parmi les organismes, Stadium Corporation a été impliquée dans le plus grand nombre d'appels (25), suivie par la Commission des accidents du travail (19). En 1988, les appels les plus nombreux visaient les ministères de la Santé et des Services correctionnels et, parmi les organismes, la Commission des accidents du travail et Ontario Hydro.

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TABLEAU 16 / GENRES D'AUTEURS DE DEMANDE

	1988		1989	
	DOCUMENTS GÉNÉRAUX	RENSEIGNEMENTS PERSONNELS	DOCUMENTS GÉNÉRAUX	RENSEIGNEMENTS PERSONNELS
TOTAL	Nbre	%	Nbre	%

	Particulier	Entreprise	Recherche	Média	Association	Autre	Inconnu	Total
	975	258	212	192	101	306	S.O.	2044
	1478	88	3	2	12	633	S.O.	2216
	1320	543	157	182	162	154	3031	5549
	2541	10	1	2	0	0	142	2696
	6314	899	373	378	275	1093	3173	12505
	50.5	7.2	3.0	3.0	2.2	8.7	25.4	100.0

\* Ce tableau comprend toutes les demandes exécutées. (Les demandes de rectification sont incluses à titre de demandes de renseignements personnels.)

TABLEAU 14 / CAS COMPORTANT UNE ESTIMATION DE FRAIS

	DOCUMENTS GÉNÉRAUX	RENSEIGNEMENTS PERSONNELS	DOCUMENTS GÉNÉRAUX	RENSEIGNEMENTS PERSONNELS	Nbre	%
TOTAL	1988		1989			
Perception intégrale	124	2	540	19	685	42.1
Suppression intégrale	295	27	428	179	929	57.0
Suppression partielle	7	0	8	0	15	0.9
Total	426	29	976	198	1629	100.0

TABLEAU 15 / MOTIFS DE LA PERCEPTION DE FRAIS\*

	DOCUMENTS GÉNÉRAUX	RENSEIGNEMENTS PERSONNELS	DOCUMENTS GÉNÉRAUX	RENSEIGNEMENTS PERSONNELS	Nbre	%
TOTAL	1989					
Reproduction	124	2	644	20	790	40.7
Expédition	54	1	394	11	460	23.7
Préparation	54	0	412	3	469	24.1
Temps de recherche	48	0	62	1	111	5.7
Frais d'ordinateur	27	0	69	0	96	4.9
Autres	13	0	4	0	17	0.9
Total	320	3	1585	35	1943	100.0

\* Chaque cas dans lequel des frais sont envisagés peut donner lieu à la perception de frais pour plusieurs motifs.

TABLEAU 12 / RÉGLEMENT DES DEMANDES

	1988			1989			TOTAL
	DOCUMENTS RENSEIGNEMENTS GÉNÉRAUX	PERSONNELS	DOCUMENTS RENSEIGNEMENTS GÉNÉRAUX	PERSONNELS	DOCUMENTS RENSEIGNEMENTS GÉNÉRAUX	PERSONNELS	
Divulgateion intégrale	855	1512	3962	1872	8201	65.6	
Divulgateion partielle	444	477	639	644	2204	17.6	
Aucune divulgation	519	145	595	125	1384	11.0	
Retrait/ Abandon	224	65	347	48	684	5.4	
Refus de confirmer/nier	2	4	6	7	19	0.1	
Total	2044	2203	5549	2696	12492	100.0	

\* Le règlement des demandes de rectification est indiqué séparément (Tableau 13).

TABLEAU 13 / ABOUTISSEMENT DES DEMANDES DE RECTIFICATION

	TOTAL										
	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	Nbre, %
Rectification(s) acceptée(s)	4	7									11 10.4
Rectification(s) refusée(s)	8	85									93 87.7
Rectification(s) retraitée(s)/abandonnée(s)	1	1									2 1.9
Total	13	93									106 100.0

TABLEAU 11 / DÉLAIS D'EXÉCUTION DES DEMANDES \*

Demandes	1988	Demandes exécutées	Demandes reçues ou reportées	Demandes exécutées	Demandes reçues	Demandes exécutées	TOTAL
Transports	122	110	124	117	246	227	
Comm. des transports routiers de l'Ont.	2	0	1	2	8	1	
Réseau Go	5	5	3	2	8	7	
Total	129	115	128	120	257	235	
Trésor et Économie	46	45	48	32	94	77	
Société ontarienne du stade limitée	0	0	41	40	41	40	
Total	46	45	89	72	135	117	

Demandes	1988	Demandes exécutées	Demandes reçues ou reportées	Demandes exécutées	Demandes reçues	Demandes exécutées	TOTAL
1 à 30 jours	1513	1884	4522	2421	10340	82.7	
31 à 60 jours	313	233	601	203	1350	10.8	
61 à 90 jours	123	33	171	50	377	3.0	
91 à 120 jours	95	53	132	12	292	2.3	
21 jours ou plus	S.O.	S.O.	123	10	133	1.0	
Total	2044	2203	5549	2696	12492	100.0	

\* Ce tableau ne tient pas compte des demandes de rectification. (La donnée relative au délai d'exécution n'a pas été recueillie pour les demandes de rectification.)



1988 1989 TOTAL

Demandes reçues Demandes reçues ou reportées Demandes exécutées Demandes reçues Demandes exécutées

Services sociaux et communautaires	362	342	518	487	880	829
Comm. d'étude des services à l'enfance et à la famille	0	0	1	1	1	1
Commission de révision de l'aide sociale	9	8	14	14	23	22
Comm. de rév. des placements sous garde	0	0	2	2	2	2
Conseil médical consultatif	1	1	0	0	1	1
Total	372	351	535	504	907	855
Solliciteur général	120	112	176	149	296	261
Comité consultatif sur la prévention du crime	2	2	0	0	2	2
Comm. d'arbitrage de la police de l'Ont.	2	2	0	2	2	2
Comm. du code des incendies	2	2	0	0	2	2
Comm. d'étude des soins aux animaux	2	2	0	0	2	2
Comm. de police de l'Ontario	7	7	11	11	18	18
Conseil des coroners	2	2	0	0	2	2
Total	137	129	187	160	324	289
Tourisme et Loisirs	17	15	24	19	41	34
Commission des parcs du Niagara	0	0	2	2	2	2
Commission des parcs de Saint-Laurent	1	1	3	3	4	4
Société d'exploitation de la Place de l'Ontario	2	2	30	24	32	26
Société des loteries de l'Ontario	3	3	5	5	8	8
Total	23	21	64	53	87	74
Travail	122	98	214	184	336	282
Comité des normes en matières de maladies professionnelles	1	1	0	0	1	1
Comm. des accidents du travail	264	233	1,256	1,251	1,520	1,484
Commission de l'équité salariale	0	0	2	1	2	1
Conseil consultatif sur la santé et la sécurité au travail	1	1	0	0	1	1
Comm. d'évaluation des classifications	0	0	1	1	1	1
Comm. des griefs de la fonction publique	0	0	2	2	2	2
Commission de règlement des griefs des employés de la Couronne	2	2	3	2	5	4
Comm. des relations de travail de l'Ont.	7	4	8	7	15	11
Tribunal d'appel des accidents du travail	0	0	1	1	1	1
Tribunal des relations de travail de la fonction publique de l'Ontario	0	0	1	1	1	1
Total	397	339	1,488	1,450	1,885	1,789

						1988		1989		TOTAL	
Demandes exécutées	Demandes exécutées	Demandes exécutées	Demandes exécutées	Demandes exécutées	Demandes exécutées	1988		1989		TOTAL	
						reçues	reçues	reçues ou reportées	reçues	exécutées	exécutées
Procureur général	139	130	207	161	346	1	2	1	2	291	2
Bureau du Commissaire aux plaintes du public	5	3	13	8	18	11	5	13	8	11	11
Comité consultatif du Curateur	2	2	1	1	3	3	2	1	3	3	3
Comm. des affaires municipales de l'Ontario	3	3	3	3	6	6	3	3	6	6	6
Comm. d'indemnisation des victimes d'actes criminels	2	2	1	1	3	3	2	1	3	3	3
Commission de révision	2	2	0	0	2	2	2	0	2	2	2
de l'évaluation foncière											
Total	152	141	225	174	377	315	152	225	174	377	315
Revenu	786	756	3,132	3,089	3,918	3,845	786	756	3,089	3,918	3,845
Total	786	756	3,132	3,089	3,918	3,845	786	756	3,089	3,918	3,845
Richesses naturelles	58	50	90	81	148	131	58	50	90	148	131
Santé	351	318	373	351	724	669	351	318	373	724	669
Comm. de rév. des services funéraires	2	2	0	0	2	2	2	0	0	2	2
Conseil des sciences de la santé	15	15	12	12	27	27	15	12	12	27	27
Conseil de rév. du Lieutenant-gouverneur	2	2	0	0	2	2	2	0	0	2	2
Conseil régional de santé d'Ottawa-Carleton	0	0	18	14	18	14	0	18	14	18	14
Conseil régional de santé de Toronto	0	0	1	1	1	1	0	1	1	1	1
Total	370	337	404	378	774	715	370	337	404	774	715
Secrétariat du Conseil de gestion	20	19	16	15	36	34	20	19	16	36	34
Total	20	19	16	15	36	34	20	19	16	36	34
Secrétariat des ressources humaines	50	47	54	47	104	94	50	47	54	104	94
Total	50	47	54	47	104	94	50	47	54	104	94
Services correctionnels	777	632	836	741	1,613	1,373	777	632	836	1,613	1,373
Comité consultatif du ministre sur les services correctionnels	2	2	0	0	2	2	2	0	0	2	2
Comm. de rév. des placements sous garde	21	20	25	24	46	44	21	20	25	46	44
Total	800	654	861	765	1,661	1,419	800	654	861	1,661	1,419
Services gouvernementaux	104	103	164	156	268	259	104	103	164	268	259
Total	104	103	164	156	268	259	104	103	164	268	259

1988 1989 TOTAL

Demandes reçues Demandes exécutées Demandes reçues ou exécutées Demandes exécutées

Energie	6	5	12	9	18	14
Ontario Hydro	323	285	121	93	444	378
Total	329	290	133	102	462	392
Environnement	96	81	174	152	270	233
Comité consultatif sur les évaluations environnementales	0	0	2	2	2	2
Comité consultatif sur les pesticides	8	8	0	0	8	8
Société ontarienne de gestion des déchets	9	9	4	4	13	13
Total	113	98	180	158	293	256
Formation professionnelle	24	24	16	11	40	35
Total	24	24	16	11	40	35
Industrie, Commerce et Technologie	79	76	35	34	114	110
Société de développement de l'Ontario	44	44	12	11	56	55
Total	123	120	47	45	170	165
Institutions financières	53	30	44	35	97	65
Comm. de l'assurance-automobile de l'Ont.	0	0	4	4	4	4
Comm. des régimes de retraite de l'Ont.	40	23	18	17	58	40
Comm. des valeurs mobilières de l'Ont.	14	7	16	16	30	23
Total	107	60	82	72	189	132
Logement	55	42	90	80	145	122
Commission de révision des loyers	0	0	4	4	4	4
Commissions locales de logement	6	6	12	11	18	17
Conseil des normes de loc. résidentielle	4	4	18	18	22	22
Société de logement de l'Ontario	0	0	1	0	1	0
Total	65	52	125	113	190	165
Personnes âgées	4	3	1	1	5	4
Total	4	3	1	1	5	4
Personnes handicapées	3	2	0	0	3	2
Total	3	2	0	0	3	2

TOTAL	1989	Demandes exécutées ou reportées	Demandes exécutées	Demandes exécutées	Demandes exécutées	Demandes exécutées	TOTAL
Colège Mohawk - Hamilton	0	0	3	2	3	2	2
Colège Niagara - Welland	0	0	4	4	4	4	4
Colège Northern - South Porcupine	0	0	14	14	14	14	14
Colège Sault - Sault-Sainte-Marie	0	0	2	2	2	2	2
Colège Seneca - North York	0	0	7	5	7	5	5
Colège Sheridan - Oakville	0	0	32	32	32	32	32
Colège Sir Sanford Fleming - Peterborough	0	0	27	27	27	27	27
Colège St-Clair - Windsor	0	0	3	3	3	3	3
Colège Saint-Lawrence - Brockville	0	0	2	2	2	2	2
Conseil ont. des affaires collégiales	1	1	1	1	2	2	2
Comité de sélection du Régime de bourses d'études supérieures de l'Ont.	9	9	14	13	23	23	22
Comité de sel. du Fonds d'encouragement à la recherche dans les universités	1	1	0	0	1	1	1
Total	37	33	200	189	237	222	
Condition féminine	2	2	2	2	4	4	
Total	2	2	2	2	4	4	
Consommation et Commerce	110	901	160	137	270	228	
Comm. d'appel des enr. commerciaux	1	1	0	0	1	1	
Comm. de contrôle cinématographique de l'Ont.	1	1	0	0	1	1	
Régie des alcools de l'Ontario	47	36	150	134	197	170	
Comm. des permis de vente d'alcool de l'Ont.	1	1	12	9	13	10	
Total	160	130	322	280	482	410	
Culture et Communication	7	4	31	25	38	29	
Archives publiques de l'Ontario	98	86	121	79	219	165	
Centre des sciences de l'Ontario	1	1	3	3	4	4	
Fondation du patrimoine ontarien	6	5	23	21	29	26	
Total	112	96	178	128	290	224	
Développement du Nord et Mines	7	6	14	14	21	20	
Commission de transport	1	1	0	0	1	1	
Ontario Northland	1	1	0	0	1	1	
Total	8	7	14	14	22	21	
Éducation	115	110	48	39	163	149	
Comm. des langues d'enseignement de l'Ontario	1	1	0	0	1	1	
Comm. de plan. et de mise en oeuvre	2	2	0	0	2	2	
Total	118	113	48	39	166	152	

TABLEAU 10 / DEMANDES REÇUES ET EXÉCUTÉES

	1988		1989		TOTAL	
	Demandes reçues	Demandes exécutées	Demandes reçues ou reportées	Demandes exécutées	Demandes reçues	Demandes exécutées
Affaires autochtones	0	0	1	1	1	1
Total	0	0	1	1	1	1
Affaires civiques	7	6	13	8	20	14
Comm. ont. des droits de la personne	22	20	47	31	69	51
Total	29	26	60	39	89	65
Affaires francophones	8	7	4	4	12	11
Commission des services en français de l'Ontario	0	0	2	2	2	2
Total	8	7	6	6	14	13
Affaires gouvernementales	5	4	1	1	6	5
Total	5	4	1	1	6	5
Affaires municipales	21	18	38	29	59	47
Total	21	18	38	29	59	47
Agriculture et Alimentation	4	3	10	9	14	12
Total	4	3	10	9	14	12
Bureau du Conseil des ministres	10	10	9	8	19	18
Comité consultatif du premier ministre sur les ressources en personnel-cadre	0	0	3	3	3	3
Total	10	10	12	11	22	21
Bureau du premier ministre	5	4	6	5	11	9
Total	5	4	6	5	11	9
Collèges et Universités	26	22	36	30	62	52
Collège Algonquin - Nepean	0	0	2	2	2	2
Collège Cambrian - Sudbury	0	0	2	1	2	1
Collège Canadore - North Bay	0	0	6	6	6	6
Collège Centennial - Scarborough	0	0	2	2	2	2
Collège Confederation - Thunder Bay	0	0	3	3	3	3
Collège Connestoga - Kitchener	0	0	4	4	4	4
Collège Durham - Oshawa	0	0	3	3	3	3
Collège Fanshawe - London	0	0	22	22	22	22
Collège George Brown - Toronto	0	0	2	2	2	2
Collège Georgian - Barrie	0	0	3	3	3	3
Collège Humber - Etobicoke	0	0	3	3	3	3
Collège Lambton - Sarnia	0	0	3	3	3	3



TABLEAU 9 / GENRES DE DEMANDES D'ACCÈS

1988		1989		TOTAL	
DEMANDES REÇUES	DEMANDES EXÉCUTÉES	DEMANDES REÇUES OU REPORTÉES DE L'ANNÉE PRÉCÉDENTE	DEMANDES EXÉCUTÉES	DEMANDES REÇUES	DEMANDES EXÉCUTÉES
Documents généraux 2432	2044	5980	5549	8024	7593
Renseignements personnels 2338	2203	2684	2696	4887	4899
Rectifications 14	13	93	93	106	106
Total 4784	4260	8757	8338	13017	12598

\* Ce tableau comprend toutes les demandes exécutées. Les demandes de rectification sont incluses à titre de demandes de renseignements personnels.

	DOCUMENTS GÉNÉRAUX	RENSEIGNEMENTS PERSONNELS	TOTAL DES DEMANDES
	Nbre	Nbre	Nbre
	%	%	%
Particulier	1320	2541	3861
Entreprise	543	10	553
Rechercheur	157	1	158
Média	182	2	184
Association	162	0	162
Autres	154	0	154
Inconnu	3031	142	3173
Total	5549	2696	8245
	100.0	100.1	100.0

TABLEAU 8 / GENRES D'AUTEURS DE DEMANDE \*

\* Chaque cas dans lequel des frais sont envisagés peut donner lieu à la perception de frais pour plusieurs motifs.

	DOCUMENTS GÉNÉRAUX	RENSEIGNEMENTS PERSONNELS	TOTAL DES DEMANDES
	Nbre	Nbre	Nbre
	%	%	%
Reproduction	644	20	664
Expédition	394	11	405
Préparation	412	3	415
Temps de recherche	62	1	63
Frais d'ordinateur	69	0	69
Autres	3	0	4
Total	1585	35	1620
	100.1	100.0	100.0

TABLEAU 7 / MOTIFS DE LA PERCEPTION DE FRAIS \*

TABLEAU 5 / DISPOSITIONS DES DEMANDES DE RECTIFICATION

	Nbre		%	
Rectification acceptée en totalité	7		7.5	
Rectification acceptée en partie	0		0.0	
Rectification refusée	85		91.4	
Rectification retirée/abandonnée	1		1.1	
Total	93		100.0	

Dans les cas de refus de rectification :

Nbre de déclarations de désaccord annexées au document : 59  
 Notification de déclaration de désaccord demandée : 0  
 Nbre de notifications envoyées : 58

TABLEAU 6 / CAS COMPORTANT UNE ESTIMATION DE FRAIS

	DOCUMENTS GÉNÉRAUX		RENSEIGNEMENTS PERSONNELS		TOTAL DES DEMANDES	
	Nbre		Nbre		Nbre	
	%		%		%	
Perception intégrale	540	55.3	19	9.6	559	47.6
Suppression intégrale	428	43.9	179	90.4	607	51.7
Suppression partielle	8	0.8	0	0.0	8	0.7
Total	976	100.0	198	100.0	1174	100.0
Total des frais perçus	\$ 55773.44		770.95		\$ 56544.39	
Moyenne des frais perçus par demande avec perception de frais	\$ 101.78		\$ 40.58		\$ 99.73	
Total des frais supprimés	\$ 8103.14		\$ 2530.95		\$ 10634.09	
Moyenne des frais supprimés par demande avec suppression (intégrale ou partielle) des frais:	\$ 18.59		\$ 14.14		\$ 17.29	

TABLEAU 4 / EXCEPTIONS INVOQUÉES

	DOCUMENTS GÉNÉRAUX		RENSEIGNEMENTS PERSONNELS		TOTAL	
	Nbre	%	Nbre	%	Nbre	%
Article 12 - Documents du Conseil des ministres	68	4.7	2	0.1	70	2.4
Article 13 - Conseils au gouvernement	104	7.1	48	3.3	152	5.2
Article 14 - Exécution de la loi	309	21.2	481	33.1	790	27.1
Article 15 - Rapports avec d'autres autorités gouvernementales	24	1.6	11	0.8	35	1.2
Article 16 - Défense	4	0.3	0	0.0	4	0.1
Article 17 - Renseignements de tiers	142	9.7	7	0.5	149	5.1
Article 18 - Intérêts économiques et autres	141	9.7	31	2.1	172	5.9
Article 19 - Secret professionnel de l'avocat	78	5.4	36	2.5	114	3.9
Article 20 - Menace à la santé ou à la sécurité	3	0.2	29	2.0	32	1.1
Article 21 - Vie privée (documents généraux)	474	32.5	S.O.		474	16.3
Article 22 - Critères : atteinte injustifiée à la vie privée	39	2.7	28	1.9	67	2.3
Article 49 - Vie privée (renseignements personnels)	S.O.		758	52.1	758	26.0
Article 67 - Autres lois	71	4.9	24	1.6	95	3.3
Total	1457	100.0	1455	100.0	2912	100.0
Nombre moyen d'exceptions par demande comportant une dénégation de la demande.	1.2		1.9		1.4	

TABLEAU 3 / RÉGLEMENT DES DEMANDES

DOCUMENTS GÉNÉRAUX	RENSEIGNEMENTS PERSONNELS	TOTAL DES DEMANDES
Nbre	Nbre	Nbre
%	%	%
Divulgation intégrale	3962	71.4
Divulgation partielle	639	11.5
Aucune divulgation	595	10.7
Retrait/abandon	347	6.3
Refus de confirmer/nier	6	0.1
Total	5549	100.0
	2696	99.9
	8245	100.1

\* Le règlement des demandes de rectification est indiqué séparément (Tableau 6).



TABLEAU 1 / GENRES DE DEMANDES D'ACCÈS

DEMANDES REÇUES	Nbre	%	DEMANDES EXÉCUTÉES	Nbre	%	REPORTÉES À 1990	Nbre	%
Documents généraux	5980	68.3	5549	66.6	355	74.1		
Renseignements personnels	2684	30.6	2696	32.3	124	25.9		
Rectifications	93	1.1	93	1.1	0	0.0		
Total	8757	100.0	8338	100.0	479	100.0		

TABLEAU 2 / DÉLAIS D'EXÉCUTION DES DEMANDES

DOCUMENTS GÉNÉRAUX	Nbre	%	RENSEIGNEMENTS PERSONNELS	Nbre	%	TOTAL DES DEMANDES	Nbre	%
1 à 30 jours	4522	81.5	2421	89.8	6943	84.2		
31 à 60 jours	601	10.8	203	7.5	804	9.8		
61 à 90 jours	171	3.1	50	1.9	221	2.7		
91 à 120 jours	132	2.4	12	.4	144	1.7		
121 jours ou plus	123	2.2	10	.4	133	1.6		
Total	5549	100.0	2696	100.0	8245	100.0		

\* Ce tableau ne tient pas compte des demandes de rectification. (La donnée relative au délai d'exécution n'a pas été recueillie pour les demandes de rectification.)

Dans une autre tranche de 15,6 pour 100 des demandes, une partie au moins des renseignements divulgués. Dans les cas de refus, le motif le plus fréquent a été la protection de la vie privée (Tableau 4); l'article 21 de la Loi de 1987 sur l'accès à l'information et la protection de la vie privée a été invoqué dans le cas des documents généraux et l'article 49 dans le cas des renseignements personnels. L'exception la plus souvent invoquée après celle des deux articles 21 et 49, pour les deux genres de demandes, est celle de l'article 14 aux fins d'exécution de la loi.

### Demandaes de rectification

On constate une nette augmentation du nombre de demandes de rectification en 1989.

Elles sont passées de 13 l'année précédente à 93 (Tableau 13). La plupart de ces demandes (85 sur 93) ont été refusées, ce qui a donné lieu à l'insertion de 59 déclarations de désaccord annexées aux documents et à 58 notifications de déclaration de désaccord aux personnes qui avaient eu accès aux documents en cause (Tableau 5).

### Estimations et suppressions de frais

Dans le cadre de leur rapport au commissaire, les ministères et organismes fournissent aussi des renseignements sur la perception et la suppression des frais au cours du traitement des demandes. En 1989, il y a perception de frais relativement à 548 demandes de documents généraux et 19 demandes de renseignements personnels (Tableau 6). En tout, les ministères et organismes ont établi des estimations de frais pour 1 174 demandes. Sur ce nombre, 607 ont bénéficié d'une suppression totale des frais et 8 d'une suppression au moins partielle.

En ce qui concerne les demandes d'accès aux documents généraux, la perception totale de frais s'est élevée à 55 773,44 \$ contre 770,95 \$ dans le cas des demandes de renseignements personnels. Relativement aux demandes de documents généraux et de renseignements personnels ayant donné lieu à la perception de frais, la moyenne des frais perçus a été respectivement de 101,78 \$ et 40,58 \$.

### Genres d'auteurs de demande

Les coordonnateurs à l'information et à la protection de la vie privée qui remplissent le rapport de fin d'exercice au commissaire sont également priés de préciser à quelle catégorie appartient l'auteur de chaque demande (Tableau 8). Il s'agit là d'un jugement subjectif de la part du coordonnateur, mais il peut être utile dans l'élaboration des programmes d'éducation et de rayonnement. Dans presque 40 pour 100 des demandes, les coordonnateurs n'ont pas été en mesure de fournir ce renseignement. Dans les demandes de documents généraux, en particulier, il est fréquent que la source ne soit pas précisée (54,6 pour 100 des cas).

### Motifs de la perception de frais

Dans un peu plus de la moitié des demandes ayant donné lieu à une estimation initiale de frais, il y a eu suppression intégrale des frais. La suppression a plus de chances d'avoir lieu pour les demandes de renseignements personnels que pour les demandes de documents généraux (90,4 pour 100 contre 43,9 pour 100). Au total, pour les deux genres de demandes, 10 634,09 \$ de frais ont été supprimés.

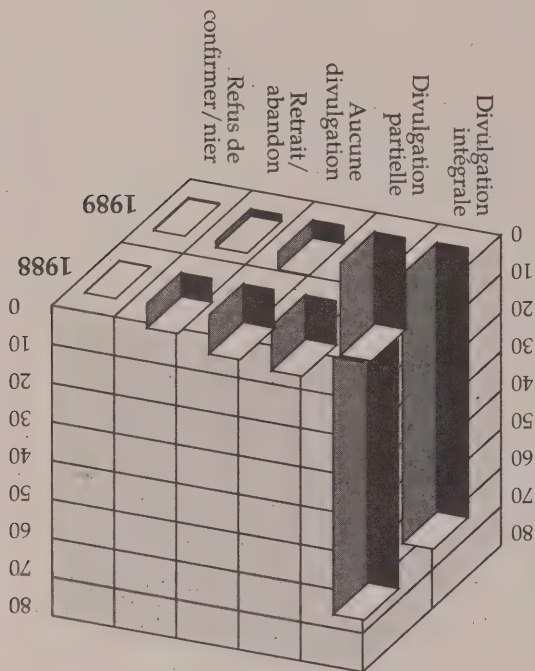
Par contre il n'a été impossible de classer la source des demandes de renseignements personnels que dans 5,5 pour 100 des cas. Lorsque ce renseignement est fourni, il s'agit en grande partie de particuliers qui sont les auteurs de la demande. La quasi-totalité des demandes de renseignements personnels (94,3 pour 100) ont été présentées par des particuliers, alors que 52,4 pour 100 des demandes de documents généraux dont le genre de source a pu être précisé ont été présentées par des particuliers.

# **Délai d'exécution des demandes**

La plupart des demandes ont été exécutées dans le délai de 30 jours imparti par la loi (Tableau 2). En ce qui concerne les demandes de documents généraux, 81,5 pour 100 ont été exécutées dans les 30 jours et 89,8 pour 100 des demandes de renseignements personnels l'ont été dans les 30 jours. Seulement 1,6 pour 100 de toutes les demandes ont exigé un délai d'exécution d'au moins 121 jours. Cela représente un progrès par rapport à 1988, où 74 pour 100 des demandes de documents généraux et 85,5 pour 100 des demandes de renseignements personnels ont été exécutées dans les 30 jours (Tableau 11).

Dans la plupart des cas (71,4 pour 100 des demandes de documents généraux, 69,4 pour 100 des demandes de renseignements personnels, 70,8 pour 100 de toutes les demandes), toute l'information a été divulguée (Tableau 3 et Figure 1).

**Figure 1 / Règlement des demandes**



mencent à émerger et qu'il devient possible de faire des prévisions.

Il y a eu, en 1989, presque deux fois autant de demandes de documents généraux que de demandes de renseignements personnels, ce qui est un changement par rapport à 1988 où la répartition était pratiquement égale entre les deux genres de demande (Tableau 9). Dans une large mesure, la différence peut s'expliquer par un changement dans les proportions de demandes signalées par un seul et même ministère, celui du Revenu. En effet, au lieu des 170 demandes de documents généraux et des 616 demandes de renseignements personnels en 1988, le ministère du Revenu déclare avoir reçu, en 1989, 3 044 demandes de documents généraux et 88 demandes de renseignements personnels (Tableau 10).

La plupart des demandes présentées en 1989 l'ont été à des ministères. Le plus grand nombre de demandes a été déclaré par le ministère du Revenu, suivi par le ministère des Services correctionnels, celui des Services sociaux et communautaires et celui de la Santé. Ces quatre ministères ont reçu un peu plus de 50 pour 100 des demandes reçues par des ministères et un peu plus de 70 pour 100 de la totalité des demandes. Ces quatre ministères avaient également reçu le plus grand nombre de demandes en 1988 (Tableau 10).

Parmi les organismes provinciaux, c'est la Commission des accidents du travail qui a reçu le plus de demandes, suivie par la Régie des alcools de l'Ontario, Ontario Hydro et les Archives publiques de l'Ontario. Bien que les demandes présentées à ces quatre organismes représentent environ 75 pour 100 des demandes des présentées à des organismes, elles ne constituent qu'un peu moins de 20 pour 100 de la totalité des demandes (Tableau 10).



ments personnels présentées aux divers ministères et organismes régis par la loi. La documentation statistique présentée ci-dessous a été recueillie auprès d'institutions publiques de l'Ontario conformément à l'article 34 de la loi qui impose aux personnes responsables d'institutions de présenter un rapport au commissaire sur les points suivants :

a) le nombre de demandes d'accès aux documents présentées à l'institution;

b) le nombre de refus de divulguer un document de la part de la personne responsable, les dispositions de la présente loi à l'appui des refus, ainsi que la fréquence de renvoi à chacune des dispositions invoquées;

c) le nombre d'appels de la décision de la personne responsable qui ont été interjetés à l'égard de chaque disposition de la présente loi;

d) la quantité de fins et d'usages non visés par les règlements énoncés aux alinéas 45 d) et e) pour lesquels des renseignements personnels sont divulgués;

e) le montant des frais perçus par l'institution aux termes de l'article 57; et

f) les renseignements relatifs aux mesures prises par l'institution afin de réaliser les objets de la présente loi.

## Statistiques relatives aux demandes reçues par les ministères et organismes

Chaque année, les divers ministères et organismes remettent au commissaire un rapport indiquant les demandes de documents généraux, de renseignements personnels et de rectification qu'ils ont reçues ainsi que les mesures prises pour répondre à ces demandes.

Comme en 1988, la totalité des institutions dont le nom figure en annexe à la Loi de 1987 sur l'accès à l'information et la protection de la vie privée ont rédigé et présenté un rapport d'activités en 1989. Une fois reçus par le commis-

saire, ces rapports ont fait l'objet d'une vérification pour voir s'il y a des incohérences internes, auquel cas, celles-ci ont été corrigées. Toutefois, certaines incohérences ne se sont manifestées qu'une fois que les données ont été rassemblées et préparées sous forme de tableau. Chaque fois que cela a été possible, les incohérences ont été résolues, mais, par suite des diverses interprétations possibles dans le calcul, il se peut que certaines données ne soient pas exactes. Si une incohérence ne peut être résolue, on suppose que les chiffres fournis par l'institution sont exacts.

En tout, les institutions provinciales ont reçu 8 757 demandes en vertu de la Loi de 1987 sur l'accès à l'information et la protection de la vie privée, à savoir, 5 980 demandes de documents généraux, 2 684 demandes de renseignements personnels et 93 demandes de rectification (Tableau 1).

Selon les rapports des institutions, la plupart des demandes ont reçu une réponse en 1989 et une petite proportion seulement a été reportée à 1990. En ce qui concerne les demandes de documents généraux, 5 549 ont été exécutées et 355 reportées. Quant aux demandes de renseignements personnels, 2 696 ont été exécutées et 124 reportées. Les 93 demandes de rectification ont toutes été exécutées en 1989.

Le pourcentage global de demandes exécutées, soit 95,2 pour 100 en 1989, est supérieur à celui de 1988 qui était de 89 pour 100, même si le volume des demandes a presque doublé par rapport aux 4 784 demandes de 1988 (Tableau 9). Comme les données fluctuent naturellement d'une année à l'autre, il y aura des augmentations et des diminutions de chiffres qui sont le simple effet du hasard. La comparaison entre deux années consécutives risque d'être trompeuse et d'aboutir à des conclusions erronées. Cela est particulièrement vrai si ces deux années sont le début d'un nouveau processus alors que bien des activités et procédures sont encore en pleine évolution. C'est seulement après un certain nombre d'années « de croisière » que les tendances com-

tionnaires de divulguer des documents dont la bureaucratie du gouvernement provincial avait la garde ou le contrôle.

Cette tradition de secret officiel était parfaite- ment compréhensible puisqu'elle faisait partie du patrimoine constitutionnel légué par la Grande-Bretagne. Il faut toutefois reconnaître qu'avant l'adoption de la loi en 1987, les prin- cipes de secret étaient profondément enracinés à tous les paliers du gouvernement de l'On- tario.

En adoptant la Loi de 1987 sur l'accès à l'informa- tion et la protection de la vie privée, l'Assemblée législative de l'Ontario rompt avec sa tradition et, pour la première fois, donne au public un droit garanti par la loi d'accès aux documents gouvernementaux et à ses propres renseigne- ments personnels. Le droit d'accès matériel ne remplit toutefois pas à lui seul tous les objec- tifs de la loi. À long terme, le succès de la loi se mesurera en partie à la façon dont elle aura réussi à modifier les attitudes des fonction- naires en tant que gardiens de l'information. L'efficacité de la loi doit donc se mesurer en termes qualitatifs autant que quantitatifs.

Dans les pages suivantes, on trouvera des données statistiques accompagnées d'autres documents d'interprétation. Le but visé est de permettre un examen global de la loi pendant sa deuxième année d'application.

## Sommaire de la nature et de la résolution finale des appels

L'alinéa 58 (2) a) de la loi enjoint le commis- saire de résumer la nature des appels et les décisions définitives rendues à cet effet. Ce résumé vise à donner une vue d'ensemble du processus d'appel aux deux stades de la médiation et de l'enquête.

Pour situer l'analyse du processus d'appel dans son contexte, il faut commencer par se pencher sur les premières demandes d'accès aux documents généraux ou aux renseigne-

Le paragraphe 58 (2) de la loi exige que le com- missaire entreprenne un examen global de la loi portant sur son efficacité à assurer l'accès à l'information et la protection de la vie privée, notamment :

- un résumé portant sur la nature des appels et sur les décisions définitives rendues sur ceux-ci;
- une évaluation du degré d'observation de la loi par les institutions;
- les recommandations du commissaire quant aux pratiques de certaines institutions et aux projets de modifications de la loi et des règlements.

Ces divers points sont traités séparément dans la présente section du rapport annuel.

Le libellé du paragraphe 58 (2) laisse entendre que l'examen du commissaire ne doit pas nécessairement se limiter aux trois points énumérés ci-dessus. Au contraire, tous les points pertinents devraient être envisagés pour que le rapport annuel du commissaire ren- ferme un examen global de la loi.

Pour mesurer l'efficacité d'une nouvelle loi, il est souvent utile d'examiner les nouvelles dis- positions dans le contexte de ce qui l'a précédée.

Avant l'entrée en vigueur de la Loi de 1987 sur l'accès à l'information et la protection de la vie privée, le 1<sup>er</sup> janvier 1988, l'accès aux renseigne- ments détenus par le gouvernement de l'On- tario était en grande partie laissé à la discrétion des personnes responsables. C'était à chaque ministre de décider si le bien commun justifiait la communication de documents ou renseigne- ments particuliers et, comme l'a constaté la Commission Williams, cette pratique débouchait sur des mesures incohérentes et prises en fonction de chaque cas particulier. Le public n'avait aucun droit sanctionné par la loi de demander, sans parler de recevoir, de l'information ayant trait au gouvernement, et le serment de confidentialité des fonction- naires contribuait encore à dissuader les fonc-



La direction de l'observation du bureau du commissaire intervient dans les trois cas suivants : lorsque le bureau reçoit une plainte du public, lorsqu'un appel soulève des questions ayant trait à l'observation de la loi ou à la protection de la vie privée, ou lorsque le commissaire décide qu'une question particulière justifie une enquête.

Dans les cas où des citoyens déposent une plainte, un enquêteur de l'observation prend contact avec le plaignant et les représentants de l'institution pour explorer les questions soulevées dans la plainte. Un rapport est ensuite envoyé au plaignant et à l'institution.

Dans certains cas, une enquête ou un examen peut déboucher sur des recommandations du commissaire modifiant ses pratiques et procédures en vue d'observer la loi. Dans des cas plus graves, le commissaire peut ordonner à une institution de cesser un mode de collecte ou de détruire des fiches de renseignements personnels (b) de la loi exige que la personne responsable ait d'abord l'occasion de présenter ses arguments au commissaire.

Une question touchant l'observation de la loi peut se limiter à un aspect précis du fonctionnement de l'institution comme elle peut avoir des répercussions à l'échelle du ministère. Dans un cas comme dans l'autre, les enquêteurs de l'observation ont l'ordre de procéder à un examen exhaustif des pratiques et procédures de l'institution et de rendre compte de leurs conclusions au commissaire.

La direction de l'observation participe également à des examens systématiques de diverses institutions si l'on y a détecté des problèmes ou si un ministère ou organisme particulier reconnaît la nécessité d'évaluer, et peut-être de modifier ses pratiques administratives et de gestion des documents en vue d'observer les dispositions de la loi. Étant donné que la loi impose à toutes les institutions publiques de nouvelles normes et pratiques, de nombreux ministères et organismes sont en train d'examiner leurs procédures et leurs pratiques. La direction de l'observation est prête à les aider dans ce processus.

## La fonction d'observation de la loi

La loi exige que le commissaire entreprenne un examen annuel de l'efficacité de la loi et évalue dans quelle mesure les institutions du gouvernement de l'Ontario observent les dispositions de la loi. Une fois qu'il a terminé son examen, le commissaire est habilité à formuler des recommandations quant aux pratiques des différents ministères et organismes.

Pour s'acquitter de ces responsabilités, le commissaire doit enquêter, surveiller, estimer, évaluer, examiner et, plus généralement, superviser la façon dont les diverses institutions ont appliqué la loi et ses règlements. La fonction d'observation qui incombe au commissaire se déroule à deux niveaux.

D'abord, le commissaire assume la responsabilité générale de veiller à ce que les institutions publiques observent la loi comme un tout. La portée de cette responsabilité s'étend à des domaines comme le respect des exigences de rapports statistiques, le traitement en bonne et due forme des demandes de renseignements et toute une gamme de questions relatives à la gestion des documents.

Au second niveau, plus précis, le commissaire doit acquiescer la conviction que les institutions ont observé les articles de la loi qui visent à «protéger la vie privée des particuliers que concernent les renseignements personnels détenus par une institution, et accorder à ces particuliers un droit d'accès à ces renseignements».

La loi formule certaines exigences en matière de collecte, rétention, usage, divulgation, destruction et sécurité des renseignements personnels. En outre, le Conseil de gestion du gouvernement est chargé de veiller à ce que soient en place des règlements qui fixent des normes administratives uniformes dans chacun des domaines susmentionnés.

La pratique du commissaire est de tenter une médiation pour tous les appels, bien que, dans des circonstances exceptionnelles, l'appel puisse déboucher directement sur l'enquête. Le cas est attribué à un responsable des appels. Si le litige vise l'accès à un document particulier, le responsable des appels examine le document et tente d'arriver par médiation à un règlement entre les parties. Le responsable des appels prend connaissance des questions en jeu dans l'appel et détermine les positions respectives des parties. Il entre en contact avec l'appelant et le représentant du gouvernement pour s'assurer qu'il n'y a pas de malentendus. Si un règlement n'est pas possible ou n'est que partiel, l'appel passe à la phase de l'enquête. Le responsable des appels rédige un rapport qui rend compte des faits et des questions qui font l'objet de l'appel.

Un avis formel d'enquête est signifié à toutes les parties qui reçoivent, en même temps, un exemplaire du rapport du responsable des appels. Les parties sont informées de leur droit de présenter leurs observations au commissaire relativement aux questions qui font l'objet de l'appel. Bien que le rapport du responsable des appels s'efforce de préciser tous les points pertinents en litige, il est clairement déclaré aux parties qu'elles sont libres de soulever tout autre point dans leurs observations. La pratique normale du commissaire consiste à exiger des mémoires par écrit et les parties disposent d'un délai raisonnable pour rédiger leurs observations.

Les observations des parties sont examinées et analysées et, lorsque le commissaire dispose de toutes les données nécessaires, il rédige une ordonnance, par écrit, réglant toutes les questions soulevées par l'appel. Chaque partie reçoit un exemplaire de l'ordonnance du commissaire. Celle-ci est également résumée et publiée dans le «Sommaire des appels» de l'organisme, qui est distribué à intervalles réguliers.





## Systèmes

L'unité de systèmes informatiques est chargée d'élaborer, d'appliquer et d'administrer quotidiennement les nécessités de l'organisme en matière d'ordinateurs. Au cours de sa première année de fonctionnement, cette unité a conçu et lancé un système de repérage informatisé à l'intention des usagers de l'extérieur, plusieurs bases de données à usage interne, des rapports automatisés et d'autres projets connexes qui fonctionnent tous sur un réseau local. C'est aussi cette unité qui s'occupe des besoins de l'organisme en matière de traitement de textes et également de données.

## Recherche et statistiques

L'unité de recherche et de statistiques fournit un soutien de recherche et assure l'évaluation de programmes pour divers aspects du mandat du commissaire. Au cours de l'année dernière, le principal axe d'activité de l'unité a consisté à surveiller les techniques de collecte de données utilisées par toutes les institutions désignées en vue d'assurer l'homogénéité des méthodes employées dans les divers rapports dont la loi impose la rédaction. L'unité a également participé à d'autres activités liées à la recherche, notamment la conception de formulaires, sondages et questionnaires, une étude analytique détaillée des tendances, méthodes et pratiques d'information des institutions publiques, l'élaboration de procédures efficaces permettant de recueillir et de repérer l'information dans l'ensemble du gouvernement, des examens de la documentation publiée pertinente, ainsi que la collecte et le rassemblement de données statistiques de toutes les institutions désignées en vue de leur intégration dans le rapport annuel du commissaire.

## Réorganisation

Le 1<sup>er</sup> janvier 1991, quelque 3 000 organismes d'administration locale seront régis par la Loi de 1989 sur l'accès à l'information municipale et la protection de la vie privée. Comme dans le cas de la loi visant les institutions provinciales, le

bureau du commissaire à l'information et à la protection de la vie privée est l'organisme auquel le public peut en appeler du refus d'une demande d'accès aux documents généraux ou à ses renseignements personnels ou s'adresser s'il désire se plaindre d'une atteinte à sa vie privée.

L'impact d'un autre palier de gouvernement sur le bureau du commissaire sera considérable. Tous les rôles et toutes les responsabilités attribués au commissaire dans le cadre de la loi provinciale sont doubles dans celui de la loi municipale. Pour que le bureau du commissaire puisse s'acquitter de son mandat multiforme en rapport avec l'un et l'autre palier de gouvernement, il faudra qu'il soit organisé de la manière la plus efficace possible. C'est pour tenir compte de cet objectif qu'un conseiller en administration a été engagé pour examiner les dispositifs administratifs et institutionnels actuels du bureau pour déterminer s'il y a lieu d'y apporter des changements par suite de l'élargissement du mandat en 1991.

C'est pourquoi le conseiller a procédé à un examen de l'organisation durant l'été et l'automne de 1989 et remis un rapport recommandant d'importants changements. Ceux-ci ont été réalisés au début de 1990 et il en sera question dans le rapport annuel du prochain exercice.

Conseil de gestion du gouvernement participant aux séances de sensibilisation organisées par le Conseil à l'intention des organismes de l'administration locale.

La direction est aussi chargée de traiter toutes les demandes de renseignements du grand public et d'assurer à l'organisme des services en français.

## Services juridiques

En 1989, les services juridiques ont fourni à l'organisme tout le soutien juridique requis et se sont également chargés de régler les appels interjetés devant le commissaire en vertu de la loi. Ils se composent de deux unités relevant d'un même directeur.

### Appels

L'unité des appels se compose d'un chef de service et de 11 responsables des appels. Elle est chargée de régler les appels interjetés en vertu de la loi touchant le refus d'accès à des documents généraux ou à des renseignements de tiers, l'accès aux renseignements personnels et la rectification de renseignements personnels classés dans les archives du gouvernement.

Le personnel traite directement avec les appelants et diverses institutions publiques en vue d'obtenir le règlement par médiation des questions faisant l'objet des appels, et apporte son aide quant aux cas qui passent au stade de l'enquête.

## Services juridiques

L'unité des services juridiques fournit à l'organisme des opinions et autres services juridiques d'ordre général. Ses fonctions comprennent, entre autres, l'analyse des lois analogues dans d'autres territoires de compétence, l'examen de décisions judiciaires pertinentes, la rédaction de commentaires sur des questions nouvelles en matière d'information et de protection de la vie privée ainsi que la communication d'opinions juridiques aux respon-

## Observation de la loi

sables des appels et de l'observation de la loi sur des points soulevés dans le cadre des appels, des enquêtes et des examens.

### Enquêtes et examens d'observation

La loi exige que les institutions publiques de l'Ontario observent certaines normes et pratiques visant à protéger l'intégrité des renseignements personnels dont ces institutions ont la garde ou le contrôle. L'unité de l'observation est chargée de vérifier si les institutions s'acquittent bien de cette responsabilité.

L'unité se compose d'un chef de service et de quatre responsables de l'observation de la loi qui mènent des enquêtes sur d'éventuelles questions d'observation qui surgissent soit dans le cadre d'un appel, soit par suite d'une plainte d'un citoyen. L'unité surveille également les politiques gouvernementales ayant trait à la collecte et à la disposition de documents personnels et donne avis et consultations sur les répercussions que des systèmes informatiques existants ou projetés dans diverses institutions publiques peuvent avoir sur la vie privée.

Au cours de sa deuxième année de fonctionnement, l'unité de l'observation de la loi s'est axée sur la mise au point et l'application de pratiques et procédures d'examen applicables au contexte de la protection de la vie privée et a entrepris de mener un certain nombre d'examen et d'enquêtes sur des pratiques précises dans des institutions.



En 1989, le bureau du commissaire à l'information et à la protection de la vie privée comprend trois directions - les services généraux, les services juridiques et l'observation de la loi.

## Bureau du commissaire

Au cours de l'année 1989, le commissaire a participé activement à tous les aspects de l'expansion administrative et opérationnelle du bureau. À titre de chef de la direction de l'organisme, il a donné l'orientation d'ensemble de l'administration et de la politique même si des questions courantes sont déléguées aux trois directeurs placés à la tête des directions, qui relèvent du commissaire.

En 1989, le bureau du commissaire a réglé 102 ordonnances. À compter de 1990, la tâche de mener des enquêtes et de rendre des ordonnances sera partagée avec un commissaire adjoint.

Le bureau du commissaire a continué d'entretenir de bons rapports avec la Direction de l'accès à l'information et de la protection de la vie privée du Conseil de gestion du gouvernement sur une gamme étendue de questions, notamment les dispositions législatives traitant de dispositions d'autres lois ayant trait au caractère confidentiel, la loi sur l'accès à l'information municipale et la protection de la vie privée et des projets de loi connexes. Lorsque ces projets de loi ont été renvoyés aux comités permanents de l'Assemblée législative et de l'administration de la justice, le bureau du commissaire a participé aux délibérations de ces comités. En même temps, le bureau a poursuivi ses activités auprès de divers bureaux et services du Bureau de l'Assemblée et de la Commission de régulation interne.

Au cours du deuxième semestre de 1989, le commissaire a entrepris des discussions sur l'impact qu'aurait sur l'organisme l'expansion de la loi sur l'accès à l'information et la protection de la vie privée aux organismes relevant de l'administration locale. Ces discussions ont abouti au choix de Touche Ross, cabinet de

## Services généraux

### Administration

Les activités de cette direction en 1989 ont consisté notamment à superviser l'engagement de nouveaux membres du personnel pour les autres services et pour sa propre croissance en fonction de l'expansion des responsabilités. Pour aider le directeur des services généraux, on a engagé un chef de service de l'administration chargé des divers services de soutien, notamment les achats, l'entretien du matériel, l'impression, la location et la sécurité du bureau. La direction a continué en outre à préparer, administrer et contrôler le budget de l'organisme, ainsi qu'à procéder à des analyses financières. Au cours de l'exercice, le directeur a assumé en plus certaines responsabilités opérationnelles dans les domaines des appels et de l'observation de la loi.

La direction a continué à servir de principal contact pour les différents bureaux et services du Bureau de l'Assemblée, ainsi que de la Commission de régulation interne.

### Communications

La direction des communications a accueilli pendant l'été de 1989 un nouveau chef de service qui a composé un plan de communication et de rayonnement pour 1990. Elle insistera particulièrement sur la formation des fonctionnaires municipaux en vue de la mise en œuvre en 1991 de la Loi de 1989 sur l'accès à l'information municipale et la protection de la vie privée. La direction mènera son programme de rayonnement dans les municipalités de concert avec le

À partir d'un ensemble de principes énoncés par la Commission de l'accès à l'information et de la protection de la vie privée (la «Commission Williams») au début des années 1980, les notions d'accès à l'information détenue par le gouvernement et de protection de la vie privée sont maintenant codifiées dans la Loi de 1987 sur l'accès à l'information et la protection de la vie privée (Ontario). Au premier plan de ces principes se situe l'intégration des deux concepts dans une seule et même loi.

Un des défis lancés au commissaire à l'information et à la protection de la vie privée consiste à maintenir ces valeurs distinctes et à déterminer, le cas échéant, le juste équilibre entre le droit du public à l'information et le droit du particulier à la protection du caractère confidentiel des renseignements personnels.

La loi exige que les institutions publiques prennent les premières décisions quant à l'application pertinente de la loi. Elle reconnaît toutefois que ces décisions sont parfois difficiles et complexes et que, selon les termes de la loi «les décisions relatives à la divulgation de l'information ayant trait au gouvernement devraient faire l'objet d'un examen indépendant du gouvernement». La loi confie cette responsabilité au commissaire et pour que son indépendance soit bien assurée, le commissaire est un fonctionnaire de l'Assemblée législative dont il relève directement.

L'une des fonctions essentielles du commissaire est de recevoir et d'étudier les appels de citoyens à qui l'on a refusé l'accès, soit à des documents généraux du gouvernement de l'Ontario, soit à leurs propres renseignements personnels. Toute décision prise par une personne responsable dans le cadre de la loi peut faire l'objet d'un appel au commissaire. La loi reconnaît également que la protection adéquate de la vie privée dépend de la conformité des institutions publiques à certaines normes en matière de collecte, de stockage, de communication et de disposition définitive des renseignements personnels. Il incombe au commissaire de veiller au respect des normes

établies par la loi et ses règlements. S'il constate, par suite d'une enquête, que les pratiques d'une institution publique au chapitre des renseignements personnels contreviennent à la loi, le commissaire est habilité à enjoindre l'institution de cesser un mode de collecte ou de détruire des fiches de renseignements personnels.

La loi donne aussi au commissaire un rôle consultatif. Chaque fois qu'un projet de loi ou de nouveau programmes du gouvernement comportent des dispositions ayant des repercussions sur la protection de la vie privée, le commissaire peut offrir ses observations.

L'expérience d'autres territoires de compétence indique que l'efficacité des droits octroyés dans le cadre des lois sur l'accès à l'information et la protection de la vie privée est directement reliée à la connaissance de ces droits de la part de la population. Pour faire en sorte que la population soit consciente de ses droits, le commissaire de l'Ontario est autorisé à mettre en oeuvre des programmes d'éducation du public et à fournir des renseignements sur le rôle et les activités du commissaire.

Le commissaire peut également procéder à des recherches sur toute matière reliée aux objets de la loi. Etant donné que nous vivons dans une société que l'on peut véritablement qualifier de «société de l'information», des technologies innovatrices continuent d'élargir le rôle de l'information considérée comme un moyen de prise de décision dans les domaines commercial, scientifique et social. Bien que ce genre de progrès technologique comporte des avantages largement reconnus, la loi reconnaît la nécessité de surveiller et d'évaluer minutieusement les repercussions que ces changements auront sur la vie privée et l'accès à l'information.

Enfin, la loi reconnaît la valeur de la participation active du public à l'application des droits établis par la loi en permettant aux citoyens de déposer des plaintes et d'exprimer des opinions quant à l'application de la loi.

Deux années se sont écoulées depuis l'entrée en vigueur de la Loi de 1987 sur l'accès à l'information et la protection de la vie privée pour les ministères de l'Ontario. Dans mon premier rapport annuel, j'ai exposé les faits de notre première année de fonctionnement, les questions relatives à l'organisation et à l'administration qui ont absorbé une bonne partie de notre temps.

À la fin de notre deuxième année, j'ai la satisfaction de constater la souplesse qui caractérise l'application de la loi. Que ce soit dans notre organisme ou dans les divers ministères, organisations, conseils et commissions, les questions d'accès à l'information et de protection de la vie privée sont abordées avec sensibilité et compétence.

La collaboration du personnel de la Direction de l'accès à l'information et de la protection de la vie privée du Conseil de gestion du gouvernement a été excellente. En outre, le maintien de nos bonnes relations de travail avec les nombreux coordonnateurs à l'information et à la protection de la vie privée dans l'ensemble du gouvernement provincial a été l'un de nos succès les plus remarquables.

Beaucoup de progrès a été réalisé au bureau du commissaire durant le dernier exercice. L'automatisation de tous les systèmes du bureau et la création d'une capacité de recherche considérable ont augmenté notre aptitude à traiter de questions complexes et difficiles. Au cours des processus d'appels, nous avons examiné des centaines de sujets, étudié de

nombreux mémoires et nous sommes penchés sur bien des questions. Au total, nous avons rendu 102 ordonnances en 1989 et bien d'autres appels ont été résolus grâce à la médiation. Les sommaires des appels donnant lieu à une décision de notre bureau constituent une jurisprudence importante qui sera utile pour l'interprétation de la loi. Les sommaires des causes résolues sont également très utiles pour l'interprétation de la loi. Ces sommaires, publiés régulièrement au cours de l'année, ont été réunis et sont maintenant publiés séparément et constituent le Volume deux de ce rapport.

L'accès à l'information et la protection de la vie privée s'étendront aux administrations municipales de tout l'Ontario en janvier 1991. Notre bureau a consacré beaucoup de temps à étudier la meilleure façon de relever le défi que 3 000 institutions de plus représenteront pour notre travail.

Nous avons entrepris un examen de notre organisation. Le présent rapport fait état de quelques particularités de notre organisme dont la plupart seront mises en oeuvre avant le 1<sup>er</sup> janvier 1991.

Nous attendons avec impatience la mise en oeuvre de la Loi de 1989 sur l'accès à l'information municipale et la protection de la vie privée et les défis qu'elle apportera. L'application de la Loi de 1987 sur l'accès à l'information et la protection de la vie privée continue d'être exigeante, mais nous sommes pleinement assurés que nos efforts sont récompensés par une meilleure connaissance et acceptation de la loi.





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Information and Privacy  
Commissioner/Ontario  
Commissaire à l'information  
et à la protection de la vie privée/Ontario

Le 24 avril 1990

L'honorable Hugh Edgihoffer, député  
Président de l'Assemblée législative

Monsieur,

Conformément à l'article 58 de la Loi de 1987 sur l'accès à l'information et la  
*protection de la vie privée*, j'ai l'honneur de vous présenter mon rapport annuel pour  
l'exercice clos le 31 décembre 1989.

Veuillez agréer, Monsieur le Président, l'expression de mes sentiments les meilleurs.

Le commissaire à l'information et à la  
protection de la vie privée de l'Ontario

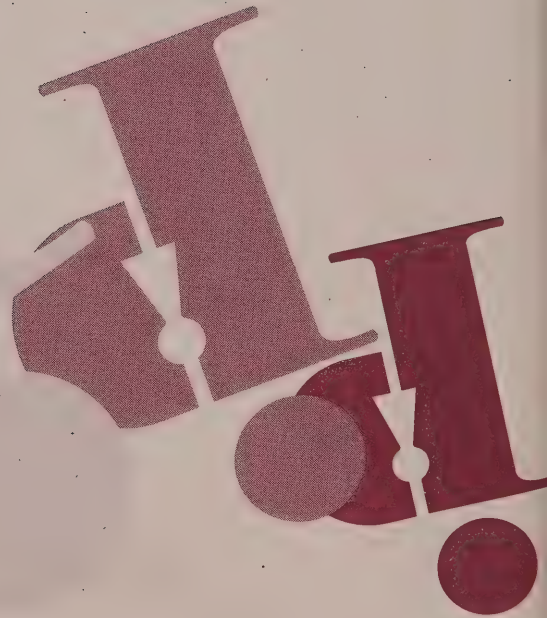
Sidney B. Linden

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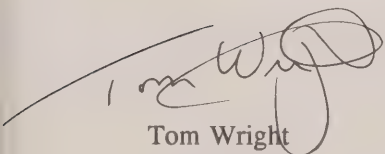
June 18, 1991

The Honourable David Warner, M.P.P.  
Speaker of the Legislative Assembly

Dear Sir:

Pursuant to section 58 of the *Freedom of Information and Protection of Privacy Act, 1987*, as amended, we have the honour to present the Annual Report of the Information and Privacy Commissioner/Ontario for the year ending December 31, 1990.

Yours truly,



Tom Wright  
Commissioner



Ann Cavoukian  
Assistant Commissioner



Tom Mitchinson  
Executive Director





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# EXECUTIVE COMMITTEE'S MESSAGE

In the three years since the *Freedom of Information and Protection of Privacy Act, 1987* (the *Act*) came into effect in Ontario, a number of changes have taken place across the government and in the Office of the Information and Privacy Commissioner (IPC).

One significant change at the IPC was the revision of the agency's organizational structure. In the fall of 1989, the IPC conducted a review of its organizational set up, to ensure that administrative and operational practices could effectively respond to the increased demands of administering the *Municipal Freedom of Information and Protection of Privacy Act, 1989*, when Ontario's access and privacy scheme extended to cover municipal institutions on January 1, 1991.

A major reorganization of the agency was completed early in 1990, and details are outlined later in this Annual Report. These changes will make it possible for the agency to effectively and efficiently address its multiple mandates in relation to both the provincial and municipal levels of government.

Another significant change for the IPC was the departure, in April of 1990, of the first Information and Privacy Commissioner, Sidney B. Linden. Mr. Linden, now Chief Judge of the Ontario Court of Justice (Provincial Division), oversaw the establishment of the IPC, and was instrumental in developing strong working relationships with provincial ministries, agencies, boards and commissions. His efforts contributed significantly to the evolution of the IPC into a mature, experienced organization.

Another change witnessed by the IPC over the past three years was the way in which provincial ministries and other government institutions responded to their responsibilities under the *Act*. Freedom of information and privacy issues are being addressed with a growing sensitivity and skill, and it is gratifying to note the very high percentage of appeals being settled through the

mediation process. Government institutions are to be commended on their level of co-operation with the Commissioner's Office, and their commitment to the principles of the legislation.

Co-operation from staff at the Freedom of Information and Privacy Branch of Management Board of Cabinet has also been excellent over the past three years. Furthermore, the continuation of our positive working relationship with the many Freedom of Information and Privacy Co-ordinators across the provincial government has been a critical component in the success of the province's access and privacy scheme.

During 1990, the IPC made significant progress in a number of access and privacy-related fields. Working with Management Board of Cabinet, we delivered a training package to many municipalities and schools boards across the province, in order to assist them in preparing for the municipal legislation.

We were also involved in preparing for the three-year review of the provincial legislation by the Standing Committee on the Legislative Assembly. We spent considerable time and energy researching and identifying proposed amendments for presentation to the Standing Committee. In addition, we completed briefing material on various issues and a number of policy and research papers.

We were successful in meeting our objective of raising the profile of privacy-related issues in 1990. **HIV/AIDS: A Need for Privacy** was released during 1990, and included our recommendations regarding anonymous testing, non-nominal reporting and partner notification. It is gratifying to note that our recommendations are being translated into government policy.

We also made our views known to the government regarding its proposed use of the new Ontario health number, which was developed to replace the OHIP number. The IPC was effective



in sensitizing the government to the need for legislation to control the uses of the new health number in both the public and private sectors. The Ministry of Health accepted our privacy-related concerns, and introduced the *Health Cards and Numbers Control Act* to address them.

Future projects to be undertaken in 1991 will include our work with the provincial government to address transborder data flow issues currently under consideration by the European Community, and an increased focus on workplace privacy concerns. We also intend to carefully monitor the new *Municipal Freedom of Information and Protection of Privacy Act, 1989*, in order to respond to the unique issues which will undoubtedly arise.

Implementation of the municipal *Act* on January 1, 1991, together with ongoing activities related to the provincial legislation, make it both clear and vital that those of us involved in access and privacy issues must continue to have a strong commitment to the principles of freedom of information and protection of individual privacy. The challenges facing us are significant, but the opportunities to foster change in attitudes towards open government and privacy protection are exhilarating and will guide us in discharging our responsibilities in the upcoming year.

---

# MANDATE

From a set of principles enunciated by the Commission on Freedom of Information and Individual Privacy (the Williams Commission) in the early 1980s, the concepts of access to government-held information and protection of personal privacy have been codified in Ontario's *Freedom of Information and Protection of Privacy Act, 1987*. Chief among these principles is the integration of both concepts in the same statute.

One of the challenges facing the Information and Privacy Commissioner is to uphold the separate values of privacy and access and strike the proper balance, when necessary, between the public's right to know and an individual's right to confidentiality of personal information.

The *Act* requires heads of all provincial government institutions to make initial determinations regarding the proper application of the law. However, the *Act* also recognizes that these decisions are sometimes difficult and complex, and that, in the words of the *Act*: "decisions on the disclosure of government information should be reviewed independently of government." The *Act* gives this responsibility to the Commissioner, and to ensure his/her independence, the Commissioner is made an Officer of the Legislature, reporting directly to the Assembly.

One of the Commissioner's key functions is to receive and consider appeals from members of the public who have been refused access to government of Ontario general records, or have been denied access to their own personal information. Any decision made by a head under the *Act* may be appealed to the Commissioner.

The *Act* also recognizes that the adequate protection of personal privacy is contingent on government institutions conforming to certain standards regarding the collection, storage, use, dissemination and ultimate disposal of personal information. The Commissioner is responsible for

ensuring adherence to the standards set out in the *Act* and its regulations. If, as the result of an investigation, the Commissioner finds that a government institution's personal information practices contravene the *Act*, he/she is empowered to order the institution to cease a collection practice, or to destroy records containing personal information.

The *Act* also gives the Commissioner an advisory role. Whenever a piece of proposed legislation or a new government program includes provisions with privacy protection implications, the Commissioner can offer comments.

Experience in other jurisdictions indicates that the effectiveness of the rights granted under freedom of information and privacy legislation is directly related to the public's knowledge of those rights. To ensure public awareness, Ontario's Commissioner is authorized to conduct public education programs and provide information on the Commissioner's role and activities.

The Commissioner can also conduct research on any matter relating to the purposes of the *Act*. Because we live in what can accurately be characterized as "the information society", innovative technologies continue to expand the role of information as a commercial, scientific and social decision-making tool. Although there are widely accepted benefits to this kind of technological advancement, the *Act* recognizes the need to carefully monitor and assess the impact these changes will have on personal privacy and access to information.

Finally, the *Act* recognizes the value of active public participation in the implementation of rights established by law, by allowing members of the public to make complaints and express opinions of the Commissioner regarding the operation of the legislation.

# ORGANIZATION

As noted in our 1989 Annual Report, in the latter part of 1989, the Office of the Information and Privacy Commissioner conducted a review of its administrative and operational arrangements to determine the need for any changes required to respond to the agency's expanded municipal mandate in 1991. The following is an outline of the organizational changes which were implemented in 1990.

The overall objective of the reorganization was to make the IPC more effective in carrying out its multiple mandates. The changes affected all departments in the IPC, and was conducted on the premise that:

- increased effectiveness could be achieved by creating distinct units in the agency responsible for certain functions or mandates of the IPC; and
- overlapping matters between departments and any necessary operational co-ordination could be achieved through specialized committees.

## Commissioner

During the first two years of its operation, it became increasingly evident that, as the IPC grew, and as the various mandates of the IPC at the provincial and municipal levels became operational, the Commissioner would need to devolve responsibility for running the day-to-day operations of the agency. Accordingly, an Executive Director and two Assistant Commissioners were appointed as an Executive Committee for the IPC, and each person was given clearly defined roles and functions.

As a result of these changes, the Commissioner would be able to assume the role of agency Chairperson, providing overall corporate direction for the IPC; devoting greater time to communicating with the public and affected constituencies; and taking a lead role in determining the future direction of the organization. The Commissioner would, however, continue to be accountable for all the decisions made by the agency.

## Assistant Commissioners

Commensurate with strengthening the role of the Commissioner, two Assistant Commissioners were appointed with delegated authority to perform various functions given to the Commissioner by the *Act*. The Assistant Information Commissioner was given authority to consider appeals from the public and to dispose of those appeals by issuing orders. The Assistant Information Commissioner is assisted in this role by an Inquiry Review Officer who is seconded on a one-year basis from the Appeals department.

The Assistant Privacy Commissioner was delegated the authority to examine privacy-related issues, including investigating complaints and conducting reviews of privacy-related issues; deciding matters relating to the destruction of personal information collections, or the cessation of collection practices; and authorizing institutions to collect personal information other than directly from the individual concerned.

Both Assistant Commissioners are also involved in the determination of policy matters that fall within the mandate of the IPC. The Assistant Information Commissioner is a member of the Executive, Appeals Operations, and Policy Committees; and the Assistant Privacy Commissioner sits as a member of the Executive, Compliance Operations, and Policy Committees.

## Executive Director

The Executive Director has delegated authority and responsibility for the day-to-day operation and administration of the IPC. The seven agency departments all report through the Executive Director. The Executive Director chairs the Management, Appeals Operations and Compliance Operations Committees, and is a member of the Executive and Policy Committees.

## Committees

Part of the reorganization of the agency involved the restructuring of existing committees and the creation of several new ones. In total, the IPC has five committees: the Executive Committee, the Management Committee, the Policy Committee, the Compliance Operations Committee and the Appeals Operations Committee.

The Executive Committee serves as the central decision-making body for the agency, and provides direction to the various operational and policy committees.

The Management Committee acts as an information-sharing body for the organization's department heads, and develops administrative policies for consideration by the Executive Committee.

The Policy Committee has the mandate to address external policy issues, and to determine the agency's strategic and operational plans.

The Compliance Operations and Appeals Operations Committees are also decision-making bodies, designed to deal with the internal policy and operational issues relating to these core functions of the IPC.

## Departments

The number and, in some cases, functions of departments within the IPC, were restructured as a result of the reorganization. The department breakdown reflects the functional mandates of the IPC.

## Appeals

The Appeals department is responsible for processing appeals filed under the *Act*. These appeals may relate to denial of access to general records, third party information, or personal information, or to the denial of requests to correct personal information held by the government.

Appeals staff deal directly with appellants and institutions in an attempt to mediate settlements of issues arising from appeals, and also handle cases which proceed to the inquiry stage of the appeals process.

The department consists of a Director, three Supervisors, 12 Appeals Officers, a Registrar of Appeals, a secretary, and a clerical assistant.

## Compliance

The *Act* requires that Ontario government institutions adhere to certain standards and practices intended to protect the integrity of personal information in the custody and control of these institutions. The Compliance department is primarily responsible for ensuring that provincial institutions comply with the various privacy provisions of the *Act*.

Investigations are conducted when issues arise, either in the context of an appeal, or as a result of a complaint from a member of the public. The department also conducts reviews which involve the investigation and analysis of institutions' information management practices as they relate to the protection of personal information. Finally, the Compliance department monitors government policies dealing with the collection and disposal of personal records, and provides advice and consultation on the privacy implications of existing or proposed computer systems in various government institutions.

The department consists of a Manager, two Compliance Supervisors, three Compliance Officers, and three Compliance Investigators.



## Strategic Planning and Policy Development

This department co-ordinates long range planning for the IPC, and is responsible for policy development issues that arise either:

- in the context of providing advice and comment regarding the privacy implications of proposed legislative schemes or government programs;
- in response to internal requests for policy advice;
- as a result of research conducted on the purposes of the *Act*; or
- as the outcome of the strategic planning process.

The department consists of a Manager and two Policy Development Officers.

## Legal Services

The Legal Services department provides opinions and other legal services for the agency. Duties include:

- providing legal opinions to Appeals Officers and Compliance staff on issues arising in the context of appeals, investigations and reviews;
- the analysis of comparative legislation in other jurisdictions;
- reviewing relevant court decisions;
- preparing commentaries on emerging information and privacy issues; and
- providing legal advice and support to all agency departments.

The department consists of a Director, a Senior Legal Counsel, four Legal Counsel, and a secretary.

## Research and Systems

The Research and Systems department provides support for various aspects of the agency's mandate, in the areas of research, program evaluation, computer systems and office systems.

Staff of the department are responsible for analyzing and reporting on data relating to requests and appeals compiled under the reporting requirements of the *Act*. Staff also administer and provide ongoing support for an electronic tracking system designed to assist institutions in tracking and reporting on requests.

The computer network used by all IPC staff was upgraded during 1990, and additional equipment and software was acquired to accommodate the expansion of the agency. Staff are responsible for ongoing maintenance and user support, as well as training for all office systems applications.

The department is headed by a Manager, and consists of three Research Officers, an Office Systems Supervisor, a Word Processing Operator, a Systems Administrator and a Systems Programmer/Analyst.

## Communications

The Communications department is responsible for IPC outreach and public education programs. During 1990, staff of the department were involved in training local government officials in preparation for implementation of the *Municipal Freedom of Information and Protection of Privacy Act, 1989*. These training sessions were conducted in conjunction with the Management Board of Cabinet.

The department is also responsible for media liaison, handling all information inquiries from members of the public, preparing information materials, and French Language Services.



The department is made up of a Manager, a Senior Communications Officer, a Communications Officer, and an Information Officer.

### Administration

The Administration department provides various support services to the IPC, including human resources management, purchasing, facilities management, office leasing and security. The department supervises the recruitment of new staff for all agency departments, and has responsibility for all financial matters at the IPC, including preparing, administering and monitoring the agency budget.

The Administration department also acts as the IPC's principal contact with the various departments of the Office of the Assembly, and the Board of Internal Economy.

A Manager heads the department, which includes three Administration Officers, four clerical assistants and a receptionist.

# PRACTICES AND PROCEDURES

## The Appeal Process

The IPC's 1988 Annual Report described some of the special features of the *Freedom of Information and Protection of Privacy Act, 1987*, (the *Act*) including the provisions that the *Statutory Powers Procedures Act* does not apply to the Commissioner's appeal procedures. This provision, however, does not mean that the Commissioner has absolute discretion in determining how to process appeals. Section 52 of the *Act*, in addition to setting out the powers of the Commissioner during an inquiry, also contains several provisions relating to the procedural rights of persons participating in an inquiry.

For example, anyone involved in an inquiry may be represented by counsel or an agent. The appellant, the head and any person affected by the outcome of an appeal must also be provided with notice of the inquiry and afforded an opportunity to make representations to the Commissioner. The form of the representations is, however, left to the discretion of the Commissioner. Section 52 also provides that no person is entitled to be present during, to have access to, or to comment on representations made to the Commissioner by any other person. One reason for this provision is that access to representations could reveal information about the record which is the subject of the appeal. The section also permits an inquiry to be conducted in private, at the Commissioner's discretion.

The *Act* gives the Commissioner considerable latitude in devising procedures which will necessarily be shaped by the special nature of the issues and the kinds of decisions the Commissioner is required to make. Apart from the procedural rights mentioned above, and the requirement that following unsuccessful mediation, an appeal shall proceed to an inquiry, the *Act* is largely silent as to how the appeal process should work and what procedures the Commissioner should employ. While the procedures followed during the appeal process will continue to evolve as the IPC gains more experience, they will always be guided by the overall principle of fairness.

What follows is an outline of the appeal process, from the mediation stage through to an inquiry and a binding order.

Subsection 50(1) of the *Act* gives a person who has made a request for access to general records, personal information, or correction of personal information, the right to appeal any decision of a head under the *Act* to the Commissioner. A third party who has been given notice of a request for access to general records or to personal information also has a right of appeal to the Commissioner.

The requester has 30 days after notice of the decision is given by the head to file a written notice of appeal with the Commissioner. After an appeal is filed, the head of the institution and any affected persons are notified of the appeal.

It is the Commissioner's practice to attempt to mediate all appeals, although in certain cases an appeal could proceed directly to an inquiry. As soon as an appeals file is opened, an Appeals Officer is assigned to the case. Where access to a particular record is in dispute, the Appeals Officer will review the record and attempt to mediate a settlement between the parties.

The Appeals Officer ascertains the issues arising from the appeal and determines the respective positions of the parties. The Appeals Officer contacts both the appellant and the government representative to ensure that there are no misunderstandings about the nature of the records or the exemptions claimed. If settlement is not possible or only partially successful, the appeal proceeds to an inquiry. The Appeals Officer prepares a report which sets out the facts and issues arising from the appeal.

A Notice of Inquiry is sent to all parties, together with a copy of the Appeals Officer's Report. The parties are advised of their right to make representations to the Commissioner with respect to the issues arising from the appeal. Finally, although the Appeals Officer's Report attempts to identify all relevant issues, it is made clear to the parties that they are free to address any other issues in their representations.

The Commissioner's normal practice is to require written representations, and the parties are provided with a reasonable period of time in which to prepare them.

The representations of the parties are reviewed and analyzed, and when the Commissioner has all the necessary information, a written order is prepared disposing of all issues in the appeal. A copy of the Commissioner's order is sent to the parties and to each affected person. The order is also summarized and published in the agency's Summaries of Appeals, which are distributed to all interested readers on a regular basis.

## The Compliance Function

The *Act* requires the Commissioner to undertake an annual review of the effectiveness of the *Act*, and to assess the extent to which Ontario government institutions are complying with the *Act*'s provisions. After completing this review, the Commissioner is authorized to make recommendations regarding the practices of individual ministries and agencies.

To discharge these responsibilities, the Commissioner must investigate, monitor, assess, evaluate, review and generally oversee how various institutions have implemented the *Act* and its regulations.

The Commissioner's compliance function operates at two levels.

First, the Commissioner has a general responsibility for ensuring that government institutions are complying with the *Act* as a whole. The scope of this responsibility encompasses matters such as compliance with statistical reporting requirements; proper processing of requests for information; and a wide range of records management issues.

On a more specific level, the Commissioner must be satisfied that institutions have complied with those sections of the *Act* that seek to "protect the privacy of individuals with respect to personal

information about themselves held by institutions and to provide individuals with a right of access to that information."

The *Act* establishes certain requirements dealing with the collection, retention, use, disclosure, disposal and security of personal information. In addition, Management Board of Cabinet is responsible for ensuring that regulations are in place which establish uniform administrative standards in each of the above-mentioned areas.

The Compliance department becomes involved when a public complaint has been received by the IPC; when an appeal raises compliance or privacy issues; or when the Commissioner determines that a particular issue warrants investigation.

In instances where complaints are filed by members of the public, a Compliance Investigator contacts both the complainant and representatives of the institution to explore the issues raised in the complaint. After the investigation has been completed, a report is sent to both the complainant and the institution, outlining the findings and any recommendations arising from the investigation.

Appeals often involve a number of issues besides the denial of a request for access to records. These issues could include compliance concerns such as the manner in which personal information can be retrieved, or the extent to which an institution is complying with the *Act*. A compliance issue could be limited to one specific aspect of the operation of the institution, or could have ministry-wide implications. In either case, Compliance Investigators are directed to conduct a thorough review of the institution's practices and procedures, and to report their findings to the Commissioner.

The Compliance department is also involved in systematic reviews of various institutions where problems have been identified or where a particular ministry or agency recognizes the need to evaluate and perhaps change its administrative and records management practices in order to



comply with the provisions of the *Act*. Because the *Act* has imposed new standards and practices for all government institutions to follow, many ministries and agencies are in the process of reviewing their procedures and practices.

The systematic reviews conducted by the Compliance department focus on such matters as record keeping practices, security systems, and the various storage, retrieval and disposal practices used by institutions in dealing with the personal information in their custody or control.

In some cases, an investigation or review could result in recommendations by the Commissioner that a particular institution change its practices and procedures in order to comply with the *Act*. In more serious cases, the Commissioner might order an institution to cease a collection practice, or to destroy collections of personal information that contravene the *Act*. If such an order is being considered, subsection 59(b) of the *Act* requires that the head of the institution be first provided with an opportunity to present arguments to the Commissioner.

The Compliance department is also involved in the review of applications made to the Commissioner for authorization to collect personal information from sources other than from the individual to whom the information relates. This practice is known as indirect collection.

The IPC is currently reviewing the practices and procedures followed by the Compliance department to ensure that all investigations meet the appropriate standards of administrative fairness. This review should be completed early in 1991.

## Policy Development

Increasingly, policy development has assumed a larger role as the mandate of the IPC has evolved, and the study of emerging access and privacy issues has moved to the foreground of the IPC's advisory mandate.

As new technologies develop, important issues are being raised as to how these technologies will impact on the access and privacy principles enshrined in the *Act*. The *Act* places an obligation on the IPC to research and study these implications and to advise on how these matters can be reconciled with the principles of the legislation. The IPC views its advisory mandate as necessitating the monitoring of technological developments, assessing their impact on the principles of the *Act*, and developing recommendations for consideration by various policy-makers.

The IPC exercises its policy development function by researching matters relating to the purposes of the *Act*, and by commenting on the privacy implications of proposed government programs and legislation.

In 1990, the IPC undertook a number of policy initiatives. Perhaps one of the most difficult privacy issues was the question of how various public and private institutions should deal with HIV/AIDS-related personal information. Following the previous year's report, *HIV/AIDS in the Workplace*, in 1990 the IPC released *HIV/AIDS: A Need For Privacy*, which dealt with broader issues associated with HIV/AIDS, such as anonymous testing, non-nominal reporting and partner notification.

The report made four recommendations, based on the assumption that the protection of privacy can be reconciled with safeguarding public health.

First, it recommended that anonymous testing for the presence of the HIV antibody should be made available for all persons who wish to be tested. Commensurate with this recommendation, the IPC asked that there be no mandatory nominal reporting of HIV positive test results, and that both of these recommendations be codified in amendments to the *Health Protection and Promotion Act*.

The second recommendation would make physicians primarily responsible for partner notification and counselling, the main objective being to facilitate voluntary partner notification by the affected individual. Physicians would be given the option of deferring partner notification to a Medical Officer of Health, if they were unwilling or unable to perform this function.

Third, the report recommended that the *Health Disciplines Act* be amended to include the concept of a physician's "duty to warn", requiring physicians to warn those at risk of transmission.

The final recommendation was that the government not institute mandatory testing for the presence of antibodies to HIV, other than the HIV testing of all donated blood, tissues, semen and embryos, and universal testing as part of anonymous, unlinked seroprevalence surveys.

We understand that our recommendations are under active consideration by the government, and that an announcement regarding implementation will be forthcoming early in 1991.

In 1990, the privacy implications of the new Ontario health number, introduced to replace the existing OHIP number, became a concern to the IPC. This new number would be assigned to each Ontario resident and would remain with the individual for life. In other words, the health number would become a unique identification number.

From the perspective of administrative efficiency, the new number has important advantages. However, from a privacy perspective, it raised several serious concerns. These concerns can be illustrated by reference to how the use of the federal Social Insurance Number (SIN) expanded beyond its original purposes. Instead of use being limited to certain programs within the federal public sector, the private sector across Canada began to routinely ask for the SIN as a way of ensuring the identification of a customer.

A policy paper on issues relating to the health number was prepared by the IPC, pointing out the dangers of the number being used beyond its original purposes. We recommended to the Minister of Health that legislation be introduced restricting use of the new number to health-related programs in the Ontario public sector, and prohibiting use in all circumstances by the private sector.

The Minister of Health responded to the IPC's recommendations by introducing the *Health Cards and Numbers Control Act*, which would limit the use of the health number to health-related programs and medical research, and prohibit private sector usage. This legislation received First Reading in December of 1990, and is expected to become law early in the 1991 spring session.

Another issue of concern to the IPC during 1990 was the question of whether the Criminal Intelligence Service of Ontario, made up of local Ontario police forces and the RCMP, should be given authority to gain unrestricted access to Bell Canada's technical information, in order to assist police forces in conducting interceptions of telephone conversations in the course of law enforcement investigations.

Bell maintained that the disclosure of this technical information would constitute a breach of the confidentiality provision in its Terms of Agreement with its customers. The IPC, along with a number of other intervenors, supported Bell Canada's position in arguments before the Canadian Radio and Telecommunications Commission (CRTC). The CRTC, in its ruling, supported our position and upheld Bell Canada's obligation to keep customer information confidential.

Computer matching has gained considerable international attention as a potential threat to personal privacy. The term "computer matching" refers to the technique of linking information in one database with information in another,



with the object of discovering significant discrepancies. Whenever personal information is matched in this manner, the IPC believes there are a number of significant privacy implications.

In the United States, computer matching is most often used to uncover fraud, as in the case of individuals who have received some form of social assistance but whose income tax returns reveal an income level that would disqualify them from receiving assistance.

The extent to which this technique is used in Ontario is not fully known, although there is little doubt that it is being utilized to some degree. Given the potential threat to personal privacy that computer matching poses, the IPC prepared a policy paper which recommended that the government of Ontario constitute a task force with a mandate to determine the extent of the use of this technique and recommended how computer matching could be controlled to avoid potential privacy abuses. (This report was to be presented to the Standing Committee on the Legislative Assembly in the context of its three-year review of the provincial *Freedom of Information and Protection of Privacy Act*, 1987.)

The IPC also prepared a paper on the call display capability of new telephone systems, which was the subject of a hearing before the CRTC. Commonly referred to as "caller identification", the system displays the telephone number of the person making the call on the screen of the receiving telephone. This is done automatically, without the knowledge and consent of the individual who is making the call. Without an ability to block this display function, caller identification capability is highly intrusive. The IPC believes that customers should have the option to acquire a blocking system that prevents their telephone number from being displayed, and that this service should be provided free of charge.

Several intervenors objected to Bell Canada's application to the CRTC for approval of its caller identification system, supporting our position that subscribers should not have to pay the 75 cent per call blocking charge proposed by Bell. In its initial decision, the CRTC upheld Bell Canada's position, although it granted one exception to women's crisis centres, which would be provided with free blocking. That decision was later appealed, and a final decision is expected in early 1991.

During the past year, the IPC also made its views known to the Ministry of Health with respect to the creation of the Ontario Cancer Control Agency. This new agency would be an amalgamation of the current Ontario Cancer Institute and the Ontario Cancer Treatment and Research Foundation. From the perspective of the IPC, the principal issue was whether this new agency would be a scheduled institution under the provincial *Freedom of Information and Protection of Privacy Act*, 1987. The IPC's position is that all Ontario government agencies should be subject to the *Act*, thereby ensuring a consistent approach to access and privacy issues across the public sector in Ontario.

Finally, the IPC developed guidelines for both provincial and municipal institutions on what information should be provided to the Commissioner when applying for authorization for indirect collection (i.e., collection of personal information from a source other than the individual to whom the information relates) under section 59(c) of the *Act*. These guidelines are available to all provincial and municipal institutions covered by the provincial and municipal *Acts*.

## Outreach

As part of its mandate, the IPC is responsible for ensuring public awareness of the *Act*, and for educating individuals and institutions about their rights and responsibilities with respect to freedom of information and protection of privacy.

One major outreach effort during 1990 involved working with the Freedom of Information and Privacy Branch of Management Board of Cabinet to deliver training sessions to municipal institutions throughout the province, in preparation for implementation of the *Municipal Freedom of Information and Protection of Privacy Act, 1989*.

In addition, the Commissioner, Assistant Commissioners and other staff members spoke to a wide range of groups during the year, providing information on freedom of information and protection of privacy to various stakeholder and public interest groups. These included:

Canadian Institute of Surveying and Mapping, Ontario College and University Library Association, Ontario Good Roads Association, Ontario Association of Property Standards Officers, Bank of Montreal, Association of Records Managers and Administrators, Ontario Urban Transit Association, Municipal Tax Collectors Association, Ontario Separate School Trustees Association, Canadian Access and Privacy Association, Association of Municipal Clerks and Treasurers, Central Canada Radio and TV News Directors Association, Water Works Association, Ontario Reporters Association, Edu-Law, Canadian Council of Administrative Tribunals, Canadian Public Relations Society, Ontario Association of Chiefs of Police, Council on Government Ethics and Lobbying, Ontario Public Buyers Association, Canadian Federation of University Women, Ontario Fire Fighters Association, Ontario Hydro, Riley Information Services, CBC, Ryerson School of Journalism, Conference of Ontario Boards and Agencies, and the Canadian Bar Association.

## Telephone Tracking

The IPC has both a local Toronto and a toll-free telephone number which members of the public can call to obtain information regarding the operation of the *Act* and the work of the Commissioner's Office.

During 1990, a total of 2,434 telephone calls were received by the IPC concerning freedom of information and protection of privacy issues. The majority of these callers, 81.7 per cent, requested general information about the *Act*; three per cent asked for information about the appeals process; 0.8 per cent asked for legal interpretations; 10.7 per cent had privacy concerns; and the remaining 3.8 per cent requested procedural guidance (i.e., how to make a request under the *Act*).

# MEASURING THE ACT'S EFFECTIVENESS

Subsection 58(2) of the *Act* requires the Commissioner to undertake a comprehensive review of the effectiveness of the *Act* in providing access to information and protection of personal privacy. This subsection further stipulates that at least three matters must be included in the Commissioner's review, namely:

- a summary of the nature and ultimate resolution of appeals;
- an assessment of the extent to which institutions are complying the *Act*; and
- the Commissioner's recommendations regarding practices of particular institutions and proposed revisions to the *Act* and regulations.

These matters will be dealt with separately in this section of the Annual Report.

The wording of subsection 58(2) suggests that the Commissioner's review need not necessarily be restricted to the three matters listed above. Rather, all relevant and pertinent matters should be included, in order that the Annual Report comprise a comprehensive review of the *Act*.

To appreciate the effectiveness of any legislation, it is often useful to look at the provisions in the context of what preceded it.

Before the *Freedom of Information and Protection of Privacy Act*, 1987 came into force on January 1, 1988, access to government information in Ontario was largely discretionary. It was up to individual ministers to decide whether the public interest warranted the release of specific records or information, and, as the Williams Commission discovered, this resulted in inconsistent and ad hoc practices. The public had no legal right to ask for, let alone receive, government information, and the civil service oath of secrecy acted as a further disincentive to disclosure of records in the custody and control of the provincial government bureaucracy.

This tradition of official secrecy was quite understandable, since it was inherited from Great Bri-

tain as part of our constitutional heritage. However, it is fair to say that, prior to the passage of the *Act* in 1987, principles of secrecy were deeply entrenched at all levels of the Ontario government.

In passing the *Freedom of Information and Protection of Privacy Act*, 1987 the Ontario Legislature broke with this inherited tradition, and, for the first time, gave the public a legal right of access to government records and to their own personal information. This right to physical access alone, however, will not achieve all of the *Act's* goals and objectives. In the long run, the success of the *Act* will be measured in part on the basis of how well it has succeeded in changing the attitudes of government officials as custodians of information. The effectiveness of the *Act*, therefore, must be measured in qualitative as well as quantitative terms.

In the following pages, statistical data along with other interpretive material will be presented. The aim of this presentation is to provide a comprehensive review of the *Act* in its third year of operation.

## Summary of the Nature and Ultimate Resolution of Appeals

Subsection 58(2)(a) of the *Act* requires the Commissioner to summarize the nature and ultimate resolution of appeals. This summary is intended to provide an overview of the appeal process at both the mediation and inquiry stages.

In order to provide the proper context of analyzing the appeal process, it is necessary to begin by looking at the initial requests for general records or personal information made to the various ministries and agencies covered by the *Act*. The statistical material provided below, has been gathered from Ontario government institutions pursuant to section 34 of the *Act*, which requires heads of institutions to report the following matters to the Commissioner:

- (a) The number of requests for access to records made to the institution;



- (b) the number of refusals by the head to disclose a record, the provisions of this *Act* under which disclosure was refused, and the number of occasions on which each provision was invoked;
- (c) for each provision of this *Act* in respect of which an appeal of a decision of a head has been commenced, the number of appeals commenced;
- (d) the number of uses or purposes for which personal information is disclosed where the use or purpose is not included in the statements of uses and purposes set forth under clauses 45(d) and (e);
- (e) the amount of fees collected by the institution under section 57; and
- (f) any other information indicating an effort by the institution to put into practice the purposes of this *Act*.

## Statistics Relating to Requests Received by Ministries and Agencies

Each year, all provincial institutions covered by the *Freedom of Information and Protection of Privacy Act* are required to report to the Commissioner. These reports provide statistical information on general records, personal information, and correction requests received by institutions, and the actions institutions have taken in response to those requests.

As in 1988 and 1989, 100 per cent of the institutions covered by the *Act* completed and submitted a report of activities during 1990. Once received by the IPC, these reports were checked for internal consistency and any discrepancies were rectified. Some inconsistencies became evident after the data had been aggregated and prepared in tabular format, and, wherever possible, these inconsistencies have been resolved. However, because various interpretations of categories of data are possible, some inconsistencies may remain, and where a discrepancy exists which

could not be resolved, the figures supplied by the institution have been assumed to be accurate.

Because data fluctuates naturally from year to year, increases and decreases in numbers could occur simply by chance. Comparisons between three consecutive years can be misleading, particularly if those three years are at the beginning of a new process when activities and procedures are still evolving. Only after a number of "stable" years are reliable trends and forecasts possible.

In all, provincial institutions received 6,345 requests under the *Act*. Of these, 3,798 were for general records, 2,493 for personal information and 54 for corrections (Table 1).

As reported by the institutions, the vast majority of requests were answered during 1990, and only a relatively small portion were carried over into 1991. For general record requests, 3,535 were completed and 551 carried over; for personal information requests, 2,434 were completed and 134 carried over; and for correction requests, 47 were completed and six carried over (Table 1).

The overall rate of completion, which includes requests carried over from previous years, was 88.9 per cent in 1990. This compares favourably with the rate of 95.2 per cent achieved in 1989 and 89.0 per cent in 1988 (Table 9).

In 1990, requests for general records made up approximately 60 per cent of all requests. In 1989, this figure was 67 per cent, up from approximately 50 per cent in 1988 (Table 9). To a large extent these differences can be accounted for by changes in the number of requests for general records reported by one ministry, the Ministry of Revenue. From 170 general record requests in 1988, the Ministry of Revenue reported receiving 3,044 general record requests in 1989 (Year Totals provided in Table 10). In 1990, this figure dropped quite substantially to 782. In addition, the number of personal information requests received by the Ministry of Revenue began at 616 in 1988, dropped to 88 in 1989, and increased again in 1990 to 165.

Most of the requests made in 1990 were to ministries, as opposed to agencies. The largest number of requests was reported by the Ministry of Correctional Services (988), followed by the Ministry of Revenue (947), the Ministry of Community and Social Services (454) and the Ministry of Government Services (414). These four ministries accounted for just over 68 per cent of the total requests received by ministries, and approximately 44 per cent of all requests.

The first three ministries listed above also received the highest number of requests during 1988 and 1989 (Table 10). However, the number of requests received by the Ministry of Government Services has increased substantially over the past three years, from 104 in 1988, to 164 in 1989, to 414 in 1990. In contrast, the number of requests received by the Ministry of Health has decreased steadily over the same period, from 351 in 1988 and 373 in 1989, to 183 in 1990.

Among provincial agencies, the Workers' Compensation Board received the most requests (377), followed by Ontario Hydro (194), the Liquor Control Board of Ontario (122) and the Archives of Ontario (71). These four provincial agencies also received the largest number of requests in 1988 and 1989 (Table 10). Although requests to these four agencies accounted for approximately 61 per cent of all requests made to agencies, they represent just over 19 per cent of the total number of requests received in 1990.

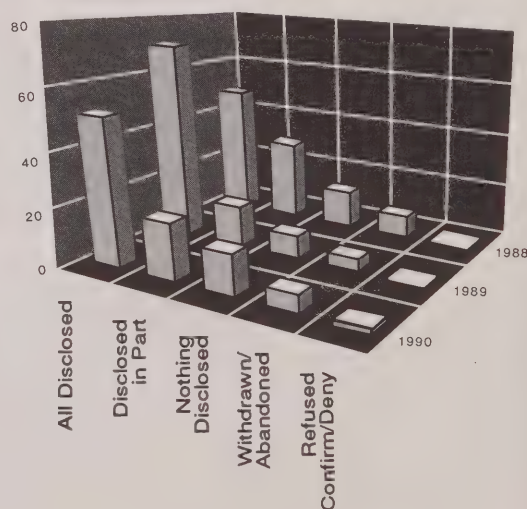
### Time Taken to Complete Requests

Most requests were completed within the 30 days permitted by the legislation (Table 2). Among general record requests, 65.3 per cent were completed within 30 days, compared to 78.1 per cent for personal information requests. Only 2.8 per cent of all requests required 121 days or more to complete. In 1990 there was a slight decrease in the percentage of general records and personal information requests completed within 30 days, compared to 1988 and 1989.

As far as the disposition of requests is concerned, the largest category of response to all types of requests was total disclosure by the institution; 45.9 per cent for general records, 55.2 per cent for personal information, and 49.7 per cent for all requests taken together (Table 3 and Figure 1). In a further 25.3 per cent of cases, at least part of the requested information was disclosed.

When access to information was denied, in the case of general records, it was most frequently done for law enforcement reasons (445 requests), under section 14 of the *Act* (Table 4). In the case of personal information, when information was refused (805 requests), it was most frequently done using section 49 of the *Act*. The second most frequently applied exemption for general records was section 21 (personal privacy - 414 requests), and for personal information it was section 14 (law enforcement - 257 requests).

Figure 1 / Disposition of Requests





## Correction Requests

There was a marked decrease in the number of correction requests made during 1990; 47, down from 93 in 1989. These 47 correction requests were still well above the 13 correction requests received in 1988 (Table 13). Most of the 1990 correction requests were refused (39 of 47) (Table 5). Four statements of disagreement were attached to records, and seven notifications of the statement of disagreement were sent to persons who had come in contact with the records involved.

## Fee Estimates

As part of the report to the Commissioner, institutions are also required to provide information on the fees collected and waived during the process of responding to requests. During 1990, a fee was collected for 796 general record requests and 14 personal information requests (Table 6). In total, ministries and agencies provided fee estimates for 1,415 requests. Of these, the entire fee was waived in 593 cases, and waived in part in 12 others. Fee waivers were more likely to occur for personal information requests than general record requests (87.3 per cent versus 38.1 per cent). A total of \$7,735.76 in fees were waived during 1990.

For general record requests, a total of \$72,688.74 in fees was collected during 1990, compared to \$513.10 for personal information requests (Table 6). For all requests in which a fee was sought, the average fee collected was \$89.96 for general records requests and \$36.65 for personal information.

## Reasons for the Collection of Fees

The most frequent reason for charging a fee was reproduction costs (40.4 per cent of all reasons), with shipping (26.0 per cent) and preparation of the material (25.4 per cent) as the next two most frequent reasons cited by institutions (Table 7).

## Categories of Requesters

The Freedom of Information and Privacy Coordinators completing the year-end reports to the Commissioner were also asked to categorize the type of requester involved in each request (Table 8). This required a subjective judgment on the part of the co-ordinators, but the information was thought to be useful in developing public education and outreach programs.

Co-ordinators were unable to make a judgment and provide this information in approximately 15.5 per cent of requests. Most of this percentage can be explained by the 884 requests made to the Ministry of Revenue which were not classified as to source. When these requests are removed from the calculation, the number of requests where co-ordinators were unable to make a judgment is reduced to 1.0 per cent.

In cases where the information was provided, individual requesters made up the largest category of requesters. The vast majority of personal information requests (88.4 per cent) were made by individuals, while 38.8 per cent of general record requests also came from individual requesters.

TABLE 1 / TYPES OF REQUESTS FOR ACCESS

	REQUESTS RECEIVED		REQUESTS COMPLETED		CARRIED OVER TO 1991	
	No.	%	No.	%	No.	%
General record	3798	59.9	3535	58.8	551	79.7
Personal information	2493	39.2	2434	40.5	134	19.4
Corrections	54	0.9	47	0.8	6	0.9
<b>Total</b>	<b>6345</b>	<b>100.0</b>	<b>6016</b>	<b>100.1</b>	<b>691</b>	<b>100.0</b>

TABLE 2 / TIME TAKEN TO COMPLETE REQUESTS\*

	GENERAL RECORDS		PERSONAL INFORMATION		TOTAL	
	No.	%	No.	%	No.	%
1-30 days	2309	65.3	1902	78.1	4211	70.5
31-60 days	734	20.8	421	17.3	1155	19.3
61-90 days	272	7.7	81	3.3	353	5.9
91-120 days	63	1.8	20	0.8	83	1.4
121 days or more	157	4.4	10	0.4	167	2.8
<b>Total</b>	<b>3535</b>	<b>100.0</b>	<b>2434</b>	<b>99.9</b>	<b>5969</b>	<b>99.9</b>

\*This table excludes correction requests. (The information regarding time to completion was not collected for correction requests.)

TABLE 3 / DISPOSITIONS OF REQUESTS\*

	GENERAL RECORDS		PERSONAL INFORMATION		TOTAL	
	No.	%	No.	%	No.	%
All disclosed	1622	45.9	1344	55.2	2966	49.7
Disclosed in part	666	18.8	843	34.6	1509	25.3
Nothing disclosed	695	19.7	157	6.5	852	14.3
Withdrawn/abandoned	425	12.0	84	3.5	509	8.5
Refused to confirm/deny	127	3.6	6	0.2	133	2.2
<b>Total</b>	<b>3535</b>	<b>100.0</b>	<b>2434</b>	<b>100.0</b>	<b>5969</b>	<b>100.0</b>

\*Dispositions of correction requests are given separately (Table 5).

TABLE 4 / EXEMPTIONS INVOKED

	GENERAL RECORDS		PERSONAL INFORMATION		TOTAL	
	No.	%	No.	%	No.	%
Section 12 - cabinet records	44	2.7	3	0.2	47	1.6
Section 13 - advice to governments	110	6.8	144	10.7	254	8.6
Section 14 - law enforcement	445	27.5	257	19.1	702	23.7
Section 15 - relations with other governments	14	0.9	4	0.3	18	0.6
Section 16 - defence	2	0.1	0	0.0	2	0.1
Section 17 - third party information	199	12.3	23	1.7	222	7.5
Section 18 - economic/other interests	98	6.1	28	2.1	126	4.2
Section 19 - solicitor-client privilege	74	4.6	48	3.6	122	4.1
Section 20 - danger to safety or health	16	1.0	5	0.4	21	0.7
Section 21 - personal privacy (general records)	414	25.6	N/A	N/A	414	14.0
Section 22 - information soon to be published	52	3.2	20	1.5	72	2.4
Section 49 - personal privacy (personal information)	N/A	N/A	805	59.7	805	27.1
Section 67 - other acts	149	9.2	12	0.9	161	5.4
<b>Total</b>	<b>1617</b>	<b>100.0</b>	<b>1349</b>	<b>100.2</b>	<b>2966</b>	<b>100.0</b>
Average number of exemptions per request involving a denial of the request	1.2		1.3		1.3	

TABLE 5 / DISPOSITIONS OF CORRECTION REQUESTS

	No.	%
Correction made in whole	7	14.9
Correction made in part	0	0.0
Correction refused	39	83.0
Correction withdrawn/abandoned	1	2.1
<b>Total</b>	<b>47</b>	<b>100.0</b>

No. of statements of disagreement attached to record: 4

Notification of statement of disagreement requested: 0

No. of notifications sent: 7

TABLE 6 / CASES IN WHICH FEES WERE ESTIMATED

	GENERAL RECORDS		PERSONAL INFORMATION		TOTAL	
	No.	%	No.	%	No.	%
Collected in whole	796	61.0	14	12.7	810	57.2
Waived in whole	497	38.1	96	87.3	593	42.0
Waived in part	12	0.9	0	0.0	12	0.8
<b>Total</b>	<b>1305</b>	<b>100.0</b>	<b>110</b>	<b>100.0</b>	<b>1415</b>	<b>100.0</b>
<b>Total fees collected</b>	<b>\$72,688.74</b>		<b>\$513.10</b>		<b>\$73,201.84</b>	
Average fee collected per request where fee was collected	\$89.96		\$36.65		\$89.05	
<b>Total fees waived</b>	<b>\$6,481.63</b>		<b>\$1,254.13</b>		<b>\$7,735.76</b>	
Average fees waived per request where fee was waived in whole or in part	\$12.73		\$13.06		\$12.79	



TABLE 7 / REASONS FOR COLLECTION OF FEES\*

	GENERAL RECORDS		PERSONAL INFORMATION		TOTAL	
	No.	%	No.	%	No.	%
Reproduction	927	39.5	66	56.9	993	40.4
Shipping	621	26.5	18	15.5	639	26.0
Preparation	624	26.6	0	0.0	624	25.4
Search time	82	3.5	2	1.7	84	3.4
Computer costs	82	3.5	18	15.5	100	4.1
Other	8	0.3	12	10.3	20	0.8
<b>Total</b>	<b>2344</b>	<b>99.9</b>	<b>116</b>	<b>99.9</b>	<b>2460</b>	<b>100.1</b>

\*Multiple reasons for the collection of fees could arise out of each instance in which a collection was considered.

TABLE 8 / TYPES OF REQUESTERS\*

	GENERAL RECORDS		PERSONAL INFORMATION		TOTAL	
	No.	%	No.	%	No.	%
Individual	1372	38.8	2152	88.4	3524	59.0
Business	863	24.4	74	3.0	937	15.7
Researcher	143	4.0	0	0.0	143	2.4
Media	163	4.6	0	0.0	163	2.7
Association	164	4.6	11	0.5	175	2.9
Other	86	2.4	16	0.7	102	1.7
Unknown	744	21.0	181	7.4	925	15.5
<b>Total</b>	<b>3535</b>	<b>99.8</b>	<b>2434</b>	<b>100.0</b>	<b>5969</b>	<b>99.9</b>

\*This table includes all completed requests.

TABLE 9 / TYPES OF REQUESTS FOR ACCESS\*

	1988		1989		1990		TOTAL	
	REQUESTS REC'D.	REQUESTS COMPLETED	REQUESTS REC'D.	REQUESTS COMPLETED	REQUESTS REC'D.	REQUESTS COMPLETED	REQUESTS REC'D.	REQUESTS COMPLETED
General records	2432	2044	5592	5549	3798	3535	11822	11128
Personal information	2338	2203	2549	2696	2493	2434	7380	7333
Corrections	14	13	92	93	54	47	160	153
<b>Total</b>	<b>4784</b>	<b>4260</b>	<b>8233</b>	<b>8338</b>	<b>6345</b>	<b>6016</b>	<b>19362</b>	<b>18614</b>

\*The number of requests completed in any one year may exceed the number of requests received in that year because requests may have been carried over from previous years.

TABLE 10 / REQUESTS RECEIVED AND COMPLETED\*

	1988		1989		1990			TOTAL	
	REQUESTS REC'D.	REQUESTS COMPLETED	REQUESTS REC'D.	REQUESTS COMPLETED	REQUESTS REC'D.	CARRIED OVER FROM PREVIOUS YEAR	REQUESTS COMPLETED	REQUESTS REC'D.	REQUESTS COMPLETED
Agriculture & Food	57	54	36	32	55	3	55	148	141
<b>Total</b>	<b>57</b>	<b>54</b>	<b>36</b>	<b>32</b>	<b>55</b>	<b>3</b>	<b>55</b>	<b>148</b>	<b>141</b>
Attorney General	139	130	207	161	136	31	150	482	441
Assessment Review Board	2	2	0	0	4	0	3	6	5
Criminal Injuries Compensation Board	3	3	3	3	3	0	3	9	9
Ontario Municipal Board	2	2	1	1	0	0	0	3	3
Office of Public Complaints Commissioner	1	1	1	1	1	0	1	3	3
Public Trustee	5	3	13	8	13	2	16	31	27
Statutory Procedure Rules Committee	0	0	0	0	1	0	1	1	1
<b>Total</b>	<b>152</b>	<b>141</b>	<b>225</b>	<b>174</b>	<b>158</b>	<b>33</b>	<b>174</b>	<b>535</b>	<b>489</b>
Premier's Advisory Committee on Executive Resources	0	0	3	3	0	0	0	3	3
<b>Total</b>	<b>0</b>	<b>0</b>	<b>3</b>	<b>3</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>3</b>	<b>3</b>
Citizenship	7	6	13	8	4	3	4	24	18
Ontario Advisory Council on Multiculturalism & Citizenship	0	0	0	0	2	0	2	2	2
Ontario Council on University Affairs	0	0	0	0	2	0	2	2	2

	1988		1989		1990			TOTAL	
	REQUESTS REC'D.	REQUESTS COMPLETED	REQUESTS REC'D.	REQUESTS COMPLETED	REQUESTS REC'D.	CARRIED OVER FROM PREVIOUS YEAR	REQUESTS COMPLETED	REQUESTS REC'D.	REQUESTS COMPLETED
Ontario Human Rights Commission	22	20	47	31	46	0	43	115	94
Royal Ontario Museum	0	0	0	0	2	0	2	2	2
<b>Total</b>	<b>29</b>	<b>26</b>	<b>60</b>	<b>39</b>	<b>56</b>	<b>3</b>	<b>53</b>	<b>145</b>	<b>118</b>
Colleges & Universities	26	22	36	30	45	4	41	107	93
Ontario Council of Regents for Colleges of Applied Arts & Technology	1	1	1	1	0	0	0	2	2
Ontario Graduate Scholarship Selection Board	9	9	14	13	18	0	8	41	30
University Research Incentive Fund Selection Committee	1	1	0	0	0	0	0	1	1
Algonquin College-Nepean	0	0	2	2	6	0	8	8	10
Cambrian College-Sudbury	0	0	2	1	2	0	4	4	5
Canadore College-North Bay	0	0	6	6	1	0	2	7	8
Centennial College-Scarborough	0	0	2	2	4	0	5	6	7
Confederation College-Thunder Bay	0	0	3	3	1	0	1	4	4
Connestoga College-Kitchener	0	0	4	4	2	0	2	6	6
Durham College-Ottawa	0	0	3	3	5	0	6	8	9

	1988		1989		1990		TOTAL		
	REQUESTS REC'D.	REQUESTS COMPLETED	REQUESTS REC'D.	REQUESTS COMPLETED	REQUESTS REC'D.	CARRIED OVER FROM PREVIOUS YEAR	REQUESTS COMPLETED	REQUESTS REC'D.	REQUESTS COMPLETED
Fanshawe College-London	0	0	22	22	35	0	35	57	57
George Brown College-Toronto	0	0	2	2	5	0	5	7	7
Georgian College- Barrie	0	0	3	3	3	0	4	6	7
Humber College- Etobicoke	0	0	0	0	3	2	3	3	3
Lambton College- Sarnia	0	0	3	3	1	0	1	4	4
Loyalist College- Belleville	0	0	0	0	2	0	2	2	2
Mohawk College- Hamilton	0	0	3	2	3	0	3	6	5
Niagara College- Welland	0	0	4	4	5	0	5	9	9
Northern College- South Porcupine	0	0	14	14	4	0	5	18	19
Sault College- Sault Ste Marie	0	0	2	2	3	0	4	5	6
Seneca College- North York	0	0	7	5	4	0	7	11	12
Sheridan College- Oakville	0	0	32	32	8	0	9	40	41
Sir Sanford Fleming College- Peterborough	0	0	27	27	0	0	0	27	27
St. Clair College- Windsor	0	0	3	3	2	0	2	5	5
St. Lawrence College- Brockville	0	0	2	2	3	0	3	5	5
<b>Total</b>	<b>37</b>	<b>33</b>	<b>197</b>	<b>186</b>	<b>165</b>	<b>6</b>	<b>165</b>	<b>399</b>	<b>384</b>
Community & Social Services	362	342	518	487	454	25	441	1334	1270



	1988		1989		1990			TOTAL	
	REQUESTS REC'D.	REQUESTS COMPLETED	REQUESTS REC'D.	REQUESTS COMPLETED	REQUESTS REC'D.	CARRIED OVER FROM PREVIOUS YEAR	REQUESTS COMPLETED	REQUESTS REC'D.	REQUESTS COMPLETED
Child & Family Service Review Board	0	0	1	1	0	0	0	1	1
Custody Review Board	0	0	2	2	0	0	0	2	2
Medical Advisory Board-Family Benefits	1	1	0	0	0	0	0	1	1
Social Assistance Review Board	9	8	14	14	6	0	6	29	28
<b>Total</b>	<b>372</b>	<b>351</b>	<b>535</b>	<b>504</b>	<b>460</b>	<b>25</b>	<b>447</b>	<b>1367</b>	<b>1302</b>
Consumer & Commercial Relations	110	91	160	137	156	32	140	426	368
Commercial Registration Appeal Tribunal	1	1	0	0	1	0	1	2	2
Liquor Control Board of Ontario	47	36	150	134	122	6	123	319	293
Liquor License Board of Ontario	1	1	12	9	12	1	15	25	25
Ontario Film Development Corporation	0	0	0	0	0	0	1	0	1
Ontario Film Review Board	1	1	0	0	0	0	0	1	1
Ontario Racing Commission	0	0	0	0	1	0	1	1	1
<b>Total</b>	<b>160</b>	<b>130</b>	<b>322</b>	<b>280</b>	<b>292</b>	<b>39</b>	<b>281</b>	<b>774</b>	<b>691</b>
Correctional Services	777	632	836	741	988	46	931	2601	2304
Minister's Advisory Committee on Corrections	2	2	0	0	0	0	0	2	2

	1988		1989		1990		TOTAL		
	REQUESTS REC'D.	REQUESTS COMPLETED	REQUESTS REC'D.	REQUESTS COMPLETED	REQUESTS REC'D.	CARRIED OVER FROM PREVIOUS YEAR	REQUESTS COMPLETED	REQUESTS REC'D.	REQUESTS COMPLETED
Ontario Board of Parole	21	20	25	24	27	0	28	73	72
<b>Total</b>	<b>800</b>	<b>654</b>	<b>861</b>	<b>765</b>	<b>1015</b>	<b>46</b>	<b>959</b>	<b>2676</b>	<b>2378</b>
Culture & Communications	7	4	31	25	15	0	12	53	41
Ontario Heritage Foundation	6	5	23	21	5	0	7	34	33
Ontario Science Centre	1	1	3	3	8	0	8	12	12
Archives of Ontario	98	86	121	79	71	0	59	290	224
<b>Total</b>	<b>112</b>	<b>96</b>	<b>178</b>	<b>128</b>	<b>99</b>	<b>0</b>	<b>86</b>	<b>389</b>	<b>310</b>
Office for Disabled Persons	3	2	0	0	1	0	1	4	3
<b>Total</b>	<b>3</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>1</b>	<b>4</b>	<b>3</b>
Education	115	110	48	39	57	2	67	220	216
Education Relations Committee	0	0	0	0	1	1	0	1	0
Language of Instruction Commission of Ontario	1	1	0	0	0	0	0	1	1
Planning & Implementation Commission	2	2	0	0	1	0	1	3	3
<b>Total</b>	<b>118</b>	<b>113</b>	<b>48</b>	<b>39</b>	<b>59</b>	<b>3</b>	<b>68</b>	<b>225</b>	<b>220</b>
Energy	6	5	12	9	5	2	4	23	18
Ontario Hydro	323	285	121	93	194	5	214	638	592
<b>Total</b>	<b>329</b>	<b>290</b>	<b>133</b>	<b>102</b>	<b>199</b>	<b>7</b>	<b>218</b>	<b>661</b>	<b>610</b>
Environment	96	81	174	152	185	16	188	455	421

	1988		1989		1990			TOTAL	
	REQUESTS REC'D.	REQUESTS COMPLETED	REQUESTS REC'D.	REQUESTS COMPLETED	REQUESTS REC'D.	CARRIED OVER FROM PREVIOUS YEAR	REQUESTS COMPLETED	REQUESTS REC'D.	REQUESTS COMPLETED
Environmental Appeal Board	0	0	0	0	1	0	1	1	1
Environmental Assessment Advisory Committee	0	0	2	2	2	0	2	4	4
Environmental Assessment Board	0	0	0	0	1	0	1	1	1
Ontario Energy Board	0	0	0	0	1	0	1	1	1
Ontario Waste Management Corporation	9	9	4	4	0	0	0	13	13
Pesticide Advisory Committee	8	8	0	0	1	0	1	9	9
<b>Total</b>	<b>113</b>	<b>98</b>	<b>180</b>	<b>158</b>	<b>191</b>	<b>16</b>	<b>194</b>	<b>484</b>	<b>450</b>
Financial Institutions	53	30	44	35	18	3	19	115	84
Ontario Securities Commission	14	7	16	16	11	8	4	41	27
Pension Commission of Ontario	40	23	18	17	32	2	34	90	74
Ontario Automobile Insurance Board	0	0	4	4	23	0	25	27	29
<b>Total</b>	<b>107</b>	<b>60</b>	<b>82</b>	<b>72</b>	<b>84</b>	<b>13</b>	<b>82</b>	<b>273</b>	<b>214</b>
Francophone Affairs	8	7	4	4	1	0	2	13	13
Ontario French Language Services Commission	0	0	2	2	0	0	0	2	2
<b>Total</b>	<b>8</b>	<b>7</b>	<b>6</b>	<b>6</b>	<b>1</b>	<b>0</b>	<b>2</b>	<b>15</b>	<b>15</b>

	1988		1989		1990		TOTAL		
	REQUESTS REC'D.	REQUESTS COMPLETED	REQUESTS REC'D.	REQUESTS COMPLETED	REQUESTS REC'D.	CARRIED OVER FROM PREVIOUS YEAR	REQUESTS COMPLETED	REQUESTS REC'D.	REQUESTS COMPLETED
Government Services	104	103	164	156	414	149	258	682	517
<b>Total</b>	<b>104</b>	<b>103</b>	<b>164</b>	<b>156</b>	<b>414</b>	<b>149</b>	<b>258</b>	<b>682</b>	<b>517</b>
Health	351	318	373	351	284	19	270	1008	939
Funeral Services Review Board	2	2	0	0	0	0	0	2	2
Health Disciplines Boards	15	15	12	12	12	1	12	39	39
Lieutenant Governor's Board of Review	2	2	0	0	0	0	0	2	2
Metropolitan Toronto DHC	0	0	1	1	0	0	0	1	1
Ottawa-Carleton Regional DHC	0	0	18	14	9	3	9	27	23
Sudbury DHC	0	0	0	0	1	0	1	1	1
<b>Total</b>	<b>370</b>	<b>337</b>	<b>404</b>	<b>378</b>	<b>306</b>	<b>23</b>	<b>292</b>	<b>1080</b>	<b>1007</b>
Housing	55	42	90	80	114	9	115	259	237
Building Code Commission	0	0	0	0	2	0	2	2	2
Building Materials Evaluation Commission	0	0	0	0	1	0	1	1	1
Local Housing Authorities	6	6	12	11	28	1	29	46	46
Ontario Housing Corporation	0	0	1	1	15	1	15	16	16
Rent Review Hearing Board	0	0	4	4	12	7	5	16	9
Residential Rental Standards Board	4	4	18	18	28	3	26	50	48

	1988		1989		1990		TOTAL		
	REQUESTS REC'D.	REQUESTS COMPLETED	REQUESTS REC'D.	REQUESTS COMPLETED	REQUESTS REC'D.	CARRIED OVER FROM PREVIOUS YEAR	REQUESTS COMPLETED	REQUESTS REC'D.	REQUESTS COMPLETED
Residential Tenancy Commission	0	0	0	0	1	0	1	1	1
<b>Total</b>	<b>65</b>	<b>52</b>	<b>125</b>	<b>114</b>	<b>201</b>	<b>21</b>	<b>194</b>	<b>391</b>	<b>360</b>
Human Resources Secretariat	50	47	54	47	54	7	32	158	126
<b>Total</b>	<b>50</b>	<b>47</b>	<b>54</b>	<b>47</b>	<b>54</b>	<b>7</b>	<b>32</b>	<b>158</b>	<b>126</b>
Industry, Trade & Technology	79	76	35	34	50	1	53	164	163
Innovation Ontario Corporation	0	0	0	0	1	0	1	1	1
Ontario Development Corporation	44	44	12	11	8	0	11	64	66
<b>Total</b>	<b>123</b>	<b>120</b>	<b>47</b>	<b>45</b>	<b>59</b>	<b>1</b>	<b>65</b>	<b>229</b>	<b>230</b>
Intergovernmental Affairs	5	4	1	1	4	1	6	10	11
<b>Total</b>	<b>5</b>	<b>4</b>	<b>1</b>	<b>1</b>	<b>4</b>	<b>1</b>	<b>6</b>	<b>10</b>	<b>11</b>
Labour	122	98	214	184	392	25	381	728	663
Advisory Council on Occupational Health & Safety	1	1	0	0	0	0	0	1	1
Classification Rating Committee	0	0	1	1	3	1	3	4	4
Crown Employees Grievance Settlement Board	2	2	3	2	4	1	5	9	9
Industrial Disease Standards Panel	1	1	0	0	0	0	0	1	1
Ontario Labour Relations Board	7	4	8	7	13	0	16	28	27



	1988		1989		1990		TOTAL		
	REQUESTS REC'D.	REQUESTS COMPLETED	REQUESTS REC'D.	REQUESTS COMPLETED	REQUESTS REC'D.	CARRIED OVER FROM PREVIOUS YEAR	REQUESTS COMPLETED	REQUESTS REC'D.	REQUESTS COMPLETED
Ontario Municipal Employees Retirement Board	0	0	0	0	1	0	1	1	1
Ontario Public Service Labour Relations Tribunal	0	0	1	1	4	1	4	5	5
Pay Equity Commission	0	0	2	1	3	2	2	5	3
Pay Equity Hearings Tribunal	0	0	0	0	2	0	2	2	2
Public Service Grievance Board	0	0	2	2	9	2	8	11	10
Workers' Compensation Appeals Tribunal	0	0	1	1	1	0	2	2	3
Workers' Compensation Board	264	233	1256	1251	377	3	371	1897	1855
<b>Total</b>	<b>397</b>	<b>339</b>	<b>1488</b>	<b>1450</b>	<b>809</b>	<b>35</b>	<b>795</b>	<b>2694</b>	<b>2584</b>
Management Board of Cabinet	20	19	16	15	0	0	0	36	34
<b>Total</b>	<b>20</b>	<b>19</b>	<b>16</b>	<b>15</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>36</b>	<b>34</b>
Municipal Affairs	21	18	38	29	25	6	16	84	63
<b>Total</b>	<b>21</b>	<b>18</b>	<b>38</b>	<b>29</b>	<b>25</b>	<b>6</b>	<b>16</b>	<b>84</b>	<b>63</b>
Native Affairs	0	0	1	1	1	0	1	2	2
Ontario Native Affairs Directorate	0	0	0	0	1	0	1	1	1
<b>Total</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>1</b>	<b>2</b>	<b>0</b>	<b>2</b>	<b>3</b>	<b>3</b>
Natural Resources	58	50	90	81	87	4	82	235	213
<b>Total</b>	<b>58</b>	<b>50</b>	<b>90</b>	<b>81</b>	<b>87</b>	<b>4</b>	<b>82</b>	<b>235</b>	<b>213</b>

	1988		1989		1990			TOTAL	
	REQUESTS REC'D.	REQUESTS COMPLETED	REQUESTS REC'D.	REQUESTS COMPLETED	REQUESTS REC'D.	CARRIED OVER FROM PREVIOUS YEAR	REQUESTS COMPLETED	REQUESTS REC'D.	REQUESTS COMPLETED
Northern Development & Mines	7	6	14	14	7	0	7	28	27
North Pickering Development Corporation	0	0	0	0	1	0	1	1	1
Ontario Northland Transportation Commission	1	1	0	0	5	0	4	6	5
<b>Total</b>	<b>8</b>	<b>7</b>	<b>14</b>	<b>14</b>	<b>13</b>	<b>0</b>	<b>12</b>	<b>35</b>	<b>33</b>
Office of the Premier and Cabinet Office	15	14	15	13	29	0	26	59	53
<b>Total</b>	<b>15</b>	<b>14</b>	<b>15</b>	<b>13</b>	<b>29</b>	<b>0</b>	<b>26</b>	<b>59</b>	<b>53</b>
Revenue	786	756	3132	3089	947	102	884	4865	4729
<b>Total</b>	<b>786</b>	<b>756</b>	<b>3132</b>	<b>3089</b>	<b>947</b>	<b>102</b>	<b>884</b>	<b>4865</b>	<b>4729</b>
Senior Citizens	4	3	1	1	0	0	0	5	4
<b>Total</b>	<b>4</b>	<b>3</b>	<b>1</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>5</b>	<b>4</b>
Skills Development	24	24	16	11	11	2	17	51	52
<b>Total</b>	<b>24</b>	<b>24</b>	<b>16</b>	<b>11</b>	<b>11</b>	<b>2</b>	<b>17</b>	<b>51</b>	<b>52</b>
Solicitor General	120	112	176	149	274	44	225	570	486
Advisory Committee on Crime Prevention	2	2	0	0	0	0	0	2	2
Animal Care Review Board	2	2	0	0	0	0	0	2	2
Coroners' Council	2	2	0	0	0	0	0	2	2
Fire Code Commission	2	2	0	0	0	0	0	2	2
Ontario Police Arbitration Committee	2	2	0	2	0	0	0	2	4

	1988		1989		1990			TOTAL	
	REQUESTS REC'D.	REQUESTS COMPLETED	REQUESTS REC'D.	REQUESTS COMPLETED	REQUESTS REC'D.	CARRIED OVER FROM PREVIOUS YEAR	REQUESTS COMPLETED	REQUESTS REC'D.	REQUESTS COMPLETED
Ontario Police Commission	7	7	11	11	2	0	2	20	20
<b>Total</b>	<b>137</b>	<b>129</b>	<b>187</b>	<b>162</b>	<b>276</b>	<b>44</b>	<b>227</b>	<b>600</b>	<b>518</b>
Tourism & Recreation	17	15	24	19	18	0	16	59	50
Metro Toronto Convention Centre	0	0	0	0	1	0	2	1	2
Niagara Parks Commission	0	0	2	2	0	0	0	2	2
Ontario Lottery Corporation	3	3	5	5	4	0	4	12	12
Ontario Place Corporation	2	2	30	24	9	0	12	41	38
St. Lawrence Parks Commission	1	1	3	3	0	0	0	4	4
<b>Total</b>	<b>23</b>	<b>21</b>	<b>64</b>	<b>53</b>	<b>32</b>	<b>0</b>	<b>34</b>	<b>119</b>	<b>108</b>
Transportation	122	110	124	117	171	25	163	417	390
Ontario Highway Transport Board	2	0	1	1	0	0	0	3	1
Go Transit	5	5	3	2	2	0	1	10	8
<b>Total</b>	<b>129</b>	<b>115</b>	<b>128</b>	<b>120</b>	<b>173</b>	<b>25</b>	<b>164</b>	<b>430</b>	<b>399</b>
Treasury & Economics	46	45	48	32	45	17	45	139	122
Stadium Corporation of Ontario Limited	0	0	41	40	24	1	30	65	70
<b>Total</b>	<b>46</b>	<b>45</b>	<b>89</b>	<b>72</b>	<b>69</b>	<b>18</b>	<b>75</b>	<b>204</b>	<b>192</b>
Women's Issues	2	2	2	2	0	0	0	4	4
<b>Total</b>	<b>2</b>	<b>2</b>	<b>2</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>4</b>	<b>4</b>

\*The number of requests completed in any one year may exceed the number of requests received in that year because requests may have been carried over from previous years.

TABLE 11 / TIME TAKEN TO COMPLETE REQUESTS\*

	1988		1989		1990		TOTAL	
	GENERAL RECORDS	PERSONAL INFO.	GENERAL RECORDS	PERSONAL INFO.	GENERAL RECORDS	PERSONAL INFO.	No.	%
1-30 days	1513	1884	4522	2421	2309	1902	14551	78.8
31-60 days	313	233	601	203	734	421	2505	13.6
61-90 days	123	33	171	50	272	81	730	4.0
91-120 days	95	53	132	12	63	20	375	2.0
121 days or more	N/A	N/A	123	10	157	10	300	1.6
<b>Total</b>	<b>2044</b>	<b>2203</b>	<b>5549</b>	<b>2696</b>	<b>3535</b>	<b>2434</b>	<b>18461</b>	<b>100.0</b>

\*This table excludes correction requests. (The information regarding time to completion was not collected for correction requests.)

TABLE 12 / DISPOSITION OF REQUESTS\*

	1988		1989		1990		TOTAL	
	GENERAL RECORDS	PERSONAL INFO.	GENERAL RECORDS	PERSONAL INFO.	GENERAL RECORDS	PERSONAL INFO.	No.	%
All disclosed	855	1512	3962	1872	1622	1344	11167	60.7
Disclosed in part	444	477	639	644	666	843	3713	20.2
Nothing disclosed	519	145	595	125	645	157	2186	11.9
Withdrawn/abandoned	224	65	347	48	425	84	1193	6.5
Refused to confirm/deny	2	4	6	7	127	6	152	0.8
<b>Total</b>	<b>2044</b>	<b>2203</b>	<b>5549</b>	<b>2696</b>	<b>3535</b>	<b>2434</b>	<b>18411</b>	<b>100.1</b>

\*Dispositions of correction requests are given separately (Table 13).

TABLE 13 / DISPOSITIONS OF CORRECTION REQUESTS

	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	TOTAL No.	%
Correction made	4	7	7								18	11.8
Correction refused	8	85	39								132	86.3
Correction withdrawn/ abandoned	1	1	1								3	2.0
<b>Total</b>	<b>13</b>	<b>93</b>	<b>47</b>								<b>153</b>	<b>100.1</b>

TABLE 14 / CASES IN WHICH FEES WERE ESTIMATED

	1988		1989		1990		TOTAL	
	GENERAL RECORDS	PERSONAL INFO.	GENERAL RECORDS	PERSONAL INFO.	GENERAL RECORDS	PERSONAL INFO.	No.	%
Collection in whole	124	2	540	19	796	14	1495	49.1
Waived in whole	295	27	428	179	497	96	1522	50.0
Waived in part	7	0	8	0	12	0	27	0.9
<b>Total</b>	<b>426</b>	<b>29</b>	<b>976</b>	<b>198</b>	<b>1305</b>	<b>110</b>	<b>3044</b>	<b>100.0</b>



TABLE 15 / REASON FOR COLLECTION OF FEES\*

	1988		1989		1990		TOTAL	
	GENERAL RECORDS	PERSONAL INFO.	GENERAL RECORDS	PERSONAL INFO.	GENERAL RECORDS	PERSONAL INFO.	No.	%
Reproduction	124	2	644	20	927	66	1783	40.5
Shipping	54	1	394	11	621	18	1099	25.0
Preparation	54	0	412	3	624	0	1093	24.8
Search time	48	0	62	1	82	2	195	4.4
Computer costs	27	0	69	0	82	18	196	4.5
Others	13	0	4	0	8	12	37	0.8
<b>Total</b>	<b>320</b>	<b>3</b>	<b>1585</b>	<b>35</b>	<b>2344</b>	<b>116</b>	<b>4403</b>	<b>100.0</b>

\*Multiple reasons for the collection of fees could arise out of each instance in which a collection was considered.

TABLE 16 / TYPES OF REQUESTERS\*

	1988		1989		1990		TOTAL	
	GENERAL RECORDS	PERSONAL INFO.	GENERAL RECORDS	PERSONAL INFO.	GENERAL RECORDS	PERSONAL INFO.	No.	%
Individual	975	1478	1320	2541	1372	2152	9838	53.3
Business	258	88	543	10	863	74	1836	9.9
Researcher	212	3	157	1	143	0	516	2.8
Media	192	2	182	2	163	0	541	2.9
Association	101	12	162	0	164	11	450	2.4
Others	306	633	154	0	86	16	1195	6.5
Unknown	N/A	N/A	3031	142	744	181	4098	22.2
Total	2044	2216	5549	2696	3535	2434	18474	100.0

\*This table includes all completed requests. (Correction requests are included as personal information requests.)

## Statistics Relating to the Appeal Process

During 1990, a total of 648 appeals were made to the Commissioner under the *Act* (Table 20). Of these, 512 (79 per cent) related to requests for general records, 127 (19.6 per cent) concerned requests for personal information, and the remaining nine (1.4 per cent) involved correction requests. This total represents an average of 54 new appeals per month. During 1990, 468 appeals were closed, for an average of 39 closed appeals per month.

The 1990 total of 648 appeals compares to 350 received in 1988 and 393 in 1989 (Table 20). Similarly, the 468 appeals closed during 1990 compares to 198 in 1988 and 362 in 1989.

There has been a substantial increase in the number of appeals opened and closed in each of the three years since the *Act* came into force. The increase in numbers for 1990 is partially attributable to one individual who filed 240 appeals or 37 per cent of all appeals made to the Commissioner during the year.

### Types of Decisions Appealed

Some of the 648 appeals involved more than one decision on the part of an institution. A total of 660 decisions were appealed (Table 18). Of these, 413 (62.6 per cent) related to the institution's final decision. Final decisions include access to the record being refused in whole or in part, refusal to correct a record, refusal to confirm or deny the existence of a record, or a decision by the institution that a record does not exist. Most of the appeals filed were in response to the decision by the head to refuse access to the record in whole (33 per cent) or in part (21.4 per cent).

Of the remaining decisions appealed, 99 (15 per cent) dealt with a preliminary decision made by the institution prior to a decision regarding the release of information. Preliminary decisions include fees and fee estimates, time extensions, and the possible release of third party informa-

tion. The other 148 decisions appealed (22.4 per cent) did not fall into any of the above-mentioned categories.

The proportion of each type of decision appealed remained quite similar over the three years of the *Act's* operation (Table 21). However, the proportion of appeals involving a decision to refuse access in part decreased during 1990 (21.4 per cent, compared to 29.3 per cent in 1988 and 30.5 per cent in 1989). At the same time, appeals involving a decision to refuse access in whole showed a corresponding increase in proportion since the first year of operation (23 per cent in 1988, 31.2 per cent in 1989, and 33 per cent in 1990).

The proportion of appeals concerning fees and fee estimates was lower in 1989 and 1990 than in 1988 (11.6 per cent in 1988, compared to 4.6 per cent in 1989, and 5.6 per cent in 1990). Also, the proportion of appeals in which the institution maintained that "no record exists" declined over the first three years of operation (20.1 per cent in 1988, 11 per cent in 1989, and 6.8 per cent in 1990). These changes in the types of decisions appealed may be explained by the fact that orders issued by the Commissioner are clarifying some of the issues that arise under the *Act*.

### Specific Institutions

The majority of appeals received in 1990 involved ministries (594 or 91.7 per cent), as opposed to agencies (54 or 8.3 per cent) (Table 17). The Ministry of Government Services was involved in the largest number of appeals (174). Ninety per cent, or 157 of these appeals involved one appellant. The Ministry of Health had the next highest number of appeals (64), followed by the Ministries of Revenue (56), Correctional Services (55), Solicitor General (48), and Community and Social Services (47). The agencies with the largest number of appeals were the Ontario Human Rights Commission (10), Workers' Compensation Board (10), and Stadium Corporation (nine).

The Ministries of Health and Government Services were involved in the largest number of appeals in 1989 (42 and 38 respectively). In 1988, the Ministries of Correctional Services (59) and Health (45) had the highest number of appeals. The Ministries of Community and Social Services, Government Services, Revenue, Solicitor General, and Treasury and Economics were all involved in substantially more appeals in 1990 than in previous years.

### Disposition of Appeals

It is the IPC's goal to settle as many appeals as possible through mediation. As the number of issued orders increases and covers a wider range of issues, it should be possible to apply the interpretations of the *Act* contained in orders to mediate a larger proportion of appeals.

In 1990, orders were issued for 74 (15.8 per cent) of the 468 appeals closed during the year (Table 19). Grouping appeals across categories: of the remaining 394 closed appeals, 189 (40.4 per cent) were settled, 197 (42.1 per cent) were withdrawn, six (1.3 per cent) were abandoned, and two (0.4 per cent) were found to be beyond the jurisdiction of the Commissioner's office.

The proportion of appeals closed in 1990 through the issuing of an order dropped to 15.8 per cent from 31.8 per cent in 1989 and 39.9 per cent in 1988 (Table 24). Although the number of cases closed through settlement dropped during 1990 compared to previous years (48 per cent in 1988, 59.1 per cent in 1989, and 40.4 per cent in 1990), the number of withdrawn appeals increased substantially (8.1 per cent in 1988, 7.5 per cent in 1989, and 42.1 per cent in 1990) (Table 23 and Table 24). The increase in the number of appeals resolved by means other than the issuance of an order indicates that the Commissioner's office is achieving its goal of resolving more appeals through the mediation process.

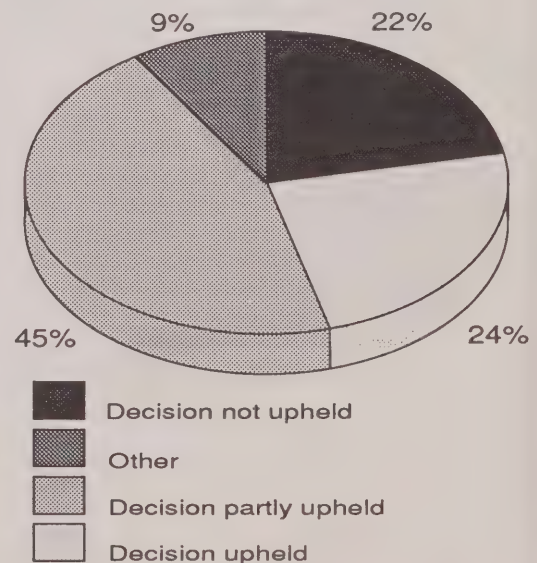
### Settled Appeals

In 1990, 87 appeals were settled because the appellant received more information from the institution (Table 19). An additional 90 were settled because the appellant received further explanations of the *Act* which satisfied his or her concerns.

### Ordered Appeals

Of the 74 appeals that were closed through issuance of an order, the decision by the head of the institution was upheld in 18 appeals (24.3 per cent), the decision was partly upheld in 33 appeals (44.6 per cent), and was not upheld in 16 appeals (21.6 per cent) (Table 19). An additional seven appeals (9.5 per cent) that involved an order did not fall into any of these categories.

Figure 2 / Ordered decisions



In comparing the proportion of orders falling within the three categories during the past three years (Table 24), there has been a decline in the proportion of orders in which the decision by the head of the institution was upheld (79.7 per cent in 1988, 45.2 per cent in 1989, and 24.3 per cent in 1990). At the same time, the proportion of orders in which the head's decision was partly upheld has increased (6.3 per cent in 1988, 23.5 per cent in 1989, and 44.6 per cent in 1990). The proportion of orders not upholding the head's decision increased in 1989 but dropped off somewhat in 1990 (13.9 per cent in 1988, 31.3 per cent in 1989, and 21.6 per cent in 1990).

The numbers indicate that there has been a trend toward a decline in the number of orders in which the head's decision was either upheld or not upheld. This may reflect the fact that the Commissioner's office is having more success in mediating appeals in which the head's decision is either clearly appropriate or inappropriate, or the fact that the Commissioner's office is receiving fewer appeals of this nature due to increased understanding of the *Act* on the part of both the institutions and the general public.

A total of 72 orders were issued in 1990. This figure compares to 102 orders issued in 1989 and 36 orders issued in 1988. The number of appeals closed through the issuance of an order exceeds the number of orders issued each year because in some cases an order disposes of more than one appeal.

## Categories of Appellants

Although the *Act* does not require appellants to provide information about themselves when filing an appeal, the IPC attempts to determine the various categories of appellants. Because this determination is subjective, the following numbers should be interpreted with caution.

Of the 648 appeals received in 1990, 466 (71.9 per cent) were submitted by individuals (Table 25). A smaller proportion of appeals were received from business representatives (9.7 per cent), followed by agents (nine per cent), researchers (3.4 per cent), and the media (3.1 per cent). An additional 19 appellants (2.9 per cent) did not fall into any of the above-mentioned categories.

These proportions have remained relatively constant over the past three years, although the proportion of appellants categorized as individuals was slightly higher in 1990 than the previous two years (71.9 per cent, compared to 64.6 per cent in 1988 and 61.1 per cent in 1989). Also, fewer appellants were categorized as agents in 1990 than in the previous year (3.1 per cent versus 10.4 per cent in 1989).



TABLE 17 / MINISTRIES AND AGENCIES INVOLVED IN APPEALS RECEIVED\*

	1988 Appeals	1989 Appeals	1990 Appeals	Total Appeals
Agriculture and Food	17	3	2	22
<b>Total</b>	<b>17</b>	<b>3</b>	<b>2</b>	<b>22</b>
Attorney General	21	16	22	59
<b>Total</b>	<b>21</b>	<b>16</b>	<b>22</b>	<b>59</b>
Cabinet Office	1	5	4	10
<b>Total</b>	<b>1</b>	<b>5</b>	<b>4</b>	<b>10</b>
Citizenship	0	0	0	0
Ontario Human Rights Commission	3	14	10	27
<b>Total</b>	<b>3</b>	<b>14</b>	<b>10</b>	<b>27</b>
Colleges and Universities	1	2	2	5
Algonquin College - Nepean	0	0	4	4
Canadore College - North Bay	0	0	1	1
Fanshawe College - London	0	0	2	2
George Brown College - Toronto	0	0	2	2
Humber College - Etobicoke	0	1	2	3
Mohawk College - Hamilton	0	0	1	1
Northern College - South Porcupine	0	1	0	1
Seneca College - North York	0	1	1	2
Sheridan College - Oakville	0	12	0	12
Sir Sanford Fleming College - Peterborough	0	1	0	1
St. Clair College - Windsor	0	1	0	1
<b>Total</b>	<b>1</b>	<b>19</b>	<b>15</b>	<b>35</b>
Community and Social Services	25	23	47	95
Child and Family Services Review Board	0	1	0	1
Social Assistance Review Board	0	1	0	1
<b>Total</b>	<b>25</b>	<b>25</b>	<b>47</b>	<b>97</b>
Consumer and Commercial Relations	11	13	14	38
Liquor Control Board of Ontario	2	1	2	5
<b>Total</b>	<b>13</b>	<b>14</b>	<b>16</b>	<b>43</b>
Correctional Services	59	32	55	146
<b>Total</b>	<b>59</b>	<b>32</b>	<b>55</b>	<b>146</b>

	1988 Appeals	1989 Appeals	1990 Appeals	Total Appeals
Culture and Communications	1	7	5	13
Ontario Heritage Foundation	0	8	0	8
Archives of Ontario	6	1	1	8
<b>Total</b>	<b>7</b>	<b>16</b>	<b>6</b>	<b>29</b>
Education	8	3	7	17
<b>Total</b>	<b>8</b>	<b>3</b>	<b>7</b>	<b>17</b>
Energy	0	1	0	5
Ontario Hydro	8	5	4	13
<b>Total</b>	<b>8</b>	<b>6</b>	<b>4</b>	<b>18</b>
Environment	13	4	20	37
Ontario Waste Management Corporation	2	0	0	2
<b>Total</b>	<b>15</b>	<b>4</b>	<b>20</b>	<b>39</b>
Financial Institutions	8	13	12	33
<b>Total</b>	<b>8</b>	<b>13</b>	<b>12</b>	<b>33</b>
Government Services	1	38	174	213
<b>Total</b>	<b>1</b>	<b>38</b>	<b>174</b>	<b>213</b>
Health	45	42	64	151
Metropolitan Toronto DHC - Toronto	0	1	0	1
<b>Total</b>	<b>45</b>	<b>43</b>	<b>64</b>	<b>152</b>
Housing	0	7	5	12
<b>Total</b>	<b>0</b>	<b>7</b>	<b>5</b>	<b>12</b>
Human Resources Secretariat	0	1	0	1
<b>Total</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>1</b>
Industry, Trade and Technology	11	5	2	18
<b>Total</b>	<b>11</b>	<b>5</b>	<b>2</b>	<b>18</b>
Labour	27	14	7	48
Ontario Labour Relations Board	2	2	2	6
Workers' Compensation Appeals Tribunal	0	1	1	2
Workers' Compensation Board	11	19	10	40
Pay Equity Commission	0	0	2	2
<b>Total</b>	<b>40</b>	<b>36</b>	<b>22</b>	<b>98</b>

	1988 Appeals	1989 Appeals	1990 Appeals	Total Appeals
Management Board of Cabinet Secretariat	2	2	2	6
<b>Total</b>	<b>2</b>	<b>2</b>	<b>2</b>	<b>6</b>
Municipal Affairs	3	4	6	13
<b>Total</b>	<b>3</b>	<b>4</b>	<b>6</b>	<b>13</b>
Natural Resources	4	11	7	22
<b>Total</b>	<b>4</b>	<b>11</b>	<b>7</b>	<b>22</b>
Northern Development and Mines	0	0	0	0
Ontario Northland Transportation Commission	0	1	0	1
<b>Total</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>1</b>
Revenue	6	3	56	66
<b>Total</b>	<b>6</b>	<b>3</b>	<b>56</b>	<b>66</b>
Skills Development	5	3	3	11
<b>Total</b>	<b>5</b>	<b>3</b>	<b>3</b>	<b>11</b>
Solicitor General	29	23	48	100
<b>Total</b>	<b>29</b>	<b>23</b>	<b>48</b>	<b>100</b>
Tourism and Recreation	2	3	0	5
Ontario Lottery Corporation	0	4	0	4
<b>Total</b>	<b>2</b>	<b>7</b>	<b>0</b>	<b>9</b>
Transportation	12	4	9	25
<b>Total</b>	<b>12</b>	<b>4</b>	<b>9</b>	<b>25</b>
Treasury and Economics	2	8	21	31
Stadium Corporation of Ontario Limited	2	25	9	36
<b>Total</b>	<b>4</b>	<b>33</b>	<b>30</b>	<b>67</b>
Women's Issues	0	2	0	2
<b>Total</b>	<b>0</b>	<b>2</b>	<b>0</b>	<b>2</b>
<b>Total</b>	<b>350</b>	<b>393</b>	<b>648</b>	<b>1391</b>

\* The 1989 appeals statistics presented in this table and the following tables have been adjusted to exclude Interim Orders.

TABLE 18 / TYPES OF DECISIONS APPEALED - 1990\*

	GENERAL RECORDS	PERSONAL INFORMATION	TOTAL No.	%
Access refused in part	83	58	141	21.4
Access refused in whole	199	19	218	33.0
No record exists	32	13	45	6.8
Fees/fee estimate	29	8	37	5.6
Third party information	39	2	41	6.2
Time extensions	13	8	21	3.2
Method of access	4	1	5	0.8
Refused to confirm/deny	5	3	8	1.2
Correction(s) refused	N/A	1	1	0.2
Other	130	13	143	21.7
<b>Total</b>	<b>534</b>	<b>126</b>	<b>660</b>	<b>100.0</b>

\*The total number of decisions appealed exceeds the total appeals due to the fact that some appeals involved more than one decision. The numbers reported above reflect the number of times each decision was appealed.

TABLE 19 / TOTAL DISPOSITIONS OF ALL APPEALS - 1990

MEDIATION STAGE	REQUESTER APPEAL		THIRD PARTY APPEAL		TOTAL	
	No.	%	No.	%	No.	%
Settled	178	47.0	5	71.4	183	47.4
Appellant received more information	(83)		(4)		(87)	
Explanation of the Act satisfied appellant	(89)		(1)		(90)	
Non-jurisdictional	2	0.5	0	0.0	2	0.5
Withdrawn	193	50.9	2	28.6	195	50.5
Abandoned	6	1.6	0	0.0	6	1.6
<b>Total</b>	<b>379</b>	<b>100.0</b>	<b>7</b>	<b>100.0</b>	<b>386</b>	<b>100.0</b>
INQUIRY STAGE						
	No.	%	No.	%	No.	%
Orders						
Head's decision upheld	17	23.6	1	50.0	18	24.3
Head's decision partly upheld	33	45.8	0	0.0	33	44.6
Head's decision not upheld	15	20.8	1	50.0	16	21.6
Other	7	9.7	0	0.0	7	9.5
<b>Total ordered cases</b>	<b>72</b>	<b>100.0</b>	<b>2</b>	<b>100.0</b>	<b>74</b>	<b>100.0</b>
Other						
Withdrawn	2	25.0	0		2	25.0
Settled	6	75.0	0		6	75.0
<b>Total other cases</b>	<b>8</b>	<b>100.0</b>	<b>0</b>		<b>8</b>	<b>100.0</b>
<b>Total inquiry cases</b>	<b>80</b>		<b>2</b>		<b>82</b>	
<b>Total closed cases</b>	<b>459</b>		<b>9</b>		<b>468</b>	



TABLE 20 / TYPES OF APPEALS

	1988		1989		1990	
	APPEALS RECEIVED	APPEALS COMPLETED	APPEALS RECEIVED	APPEALS COMPLETED	APPEALS RECEIVED	APPEALS COMPLETED
General records	259	143	298	273	512	375
Personal information	86	53	85	80	127	91
Corrections	5	2	10	9	9	2
Total	350	198	393	362	648	468

TABLE 21 / TYPES OF DECISIONS APPEALED\*

	1988	1989	1990	1991	1992
Access refused in part	111	127	141		
Access refused in whole	87	130	218		
No record exists	76	46	45		
Fees/fee estimate	44	19	37		
Third party information	15	13	41		
Time extensions	10	28	21		
Method of access	8	0	5		
Refused to confirm/deny	6	6	8		
Correction(s) refused	5	10	1		
Other	17	38	143		
<b>Total</b>	<b>379</b>	<b>417</b>	<b>660</b>		

\*The total number of decisions appealed exceeds the total appeals due to the fact that some appeals involved more than one decision. The numbers reported above reflect the number of times each decision was appealed.

TABLE 22 / CLOSED CASES: STAGE AT WHICH APPEAL DISPOSED

	1988	1989	1990	TOTAL No.	%
Mediation stage	105	207	386	698	67.9
Inquiry stage	93	155	82	330	32.1
<b>Total</b>	<b>198</b>	<b>362</b>	<b>468</b>	<b>1028</b>	<b>100.0</b>

TABLE 23 / MEDIATION STAGE

	1988	1989	1990	TOTAL No.	%
Settled	87	180	183	450	64.5
Appellant received more information	(43)	(107)	(87)		
Explanation of the Act satisfied appellant	(44)	(71)	(90)		
Non-jurisdictional	7	0	2	9	1.3
Withdrawn	10	21	195	226	32.4
Abandoned	1	6	6	13	1.9
<b>Total</b>	<b>105</b>	<b>207</b>	<b>386</b>	<b>698</b>	<b>100.0</b>

TABLE 24 / INQUIRY STAGE

	1988	1989	1990	TOTAL	
				No.	%
Orders					
Head's decision upheld	63	52	18	133	40.3
Head's decision partly upheld	5	27	33	65	19.7
Head's decision not upheld	11	36	16	63	19.1
Other			7	7	2.1
Total ordered cases	79	115	74	268	81.2
Other					
Withdrawn	6	6	2	14	4.2
Settled	8	34	6	48	14.6
Total other cases	14	40	8	62	18.8
Total inquiry cases	93	155	82	330	100.0

TABLE 25 / TYPES OF REQUESTERS INVOLVED IN APPEALS\*

	1988	1989	1990	TOTAL	
				No.	%
Individual	226	240	466	932	67.0
Business	21	25	63	109	7.8
Researcher	48	34	22	104	7.5
Media	19	34	20	73	5.3
Agent	18	41	58	117	8.4
Other	18	19	19	56	4.0
<b>Total</b>	<b>350</b>	<b>393</b>	<b>648</b>	<b>1391</b>	<b>100.0</b>

\*Since the requester in all personal information and correction requests is the individual or an authorized representative, all these requesters are treated as individuals.



## Compliance With The Act

### Appeals

Subsection 58(2)(b) of the *Act* requires the Commissioner to assess the extent to which institutions are complying with the *Freedom of Information and Protection of Privacy Act, 1987*. In 1990, the Commissioner's/ Assistant Commissioner's orders and recommendations resulting from investigations continued to guide institutions in interpreting their responsibilities under the *Act*.

### Decisions on Appeals

Some of the orders issued during 1990 which defined procedural obligations and were relevant to the question of institutions' compliance with the *Act* are described below.

Order 158 outlined an institution's responsibility where it refuses to give full or partial access to a record under section 26 of the *Act*. The Commissioner stated that the institution, in its notice of refusal under subsection 29(1)(b)(ii), must provide the requester with information about the circumstances which form the basis for the head's decision to deny access. The degree of particularity used in describing the individual record will have an impact on the amount of detail required in the reasons, and vice versa. By providing this information, the requester will be in a position to make a reasonably informed decision as to whether to appeal the head's decision.

Order 164 dealt with the issue of whether an institution has the authority, where a request is made pursuant to the *Act*, to grant the requester conditional access to the record(s). In this appeal, the institution gave a copy of the requested record to the appellant. However, in a covering letter, the head made it clear that the record was being given to the appellant on condition that it be used only by the appellant, and he was prohibited from sharing the record with other members of the public. In his order, the Commissioner stated that, other than subsection 21(1)(e)

which relates to access to personal information for research purposes, the *Act* does not contain any provisions which authorizes the head to grant conditional access to a record, in an official decision responding to a request under the *Act*. The *Act* contemplates that where access is given to a requester, it is access to the world, and, subject to the limitations imposed by other laws such as those pertaining to libel and slander, no limitations can be imposed on the use to which the requester may put the record.

Order 189 discussed an institution's responsibility where it extends the 30 day time limit set out in section 26 for responding to an access request under the *Act*. The Assistant Commissioner stated that an institution is obliged to provide specific and detailed reasons for the extension of the time limit under subsection 27(1) of the *Act*. While in some time extension notices it may not be possible to identify the records at issue (ie. an extension may be necessary for the very purpose of identifying records responsive to the request), the requirement that a requester receive notice of a time extension carries with it the necessary inference that the notice include some description of the records. The degree of particularity used to describe the record will have an impact on the amount of detail required in giving reasons, and vice versa.

Order 202 dealt with the question of whether the *Act* precludes a requester from submitting the same request more than once. The Assistant Commissioner stated that, when a requester submits the same request a second time, the institution must respond to this request on its own merits, as a new request, and make a decision. This decision could be the same or different from the one previously issued, irrespective of the fact that the records at issue may be the same.

### Investigations Arising from Appeals

During the course of 1990, nine investigations were launched to resolve issues which came to light during the course of appeals. Highlights of these investigations are outlined below.

A number of issues were raised by Appeal 880099 (Order 52) relating to the adequacy of procedures employed by the institution in retaining control over notes or tape recordings of court reporters hired to cover oral hearings conducted by the institution. In Order 52, the Commissioner asked the IPC Compliance department to conduct a full investigation of these procedures to ensure compliance with the provisions of the *Act*.

The investigation by the Compliance department was completed in 1990, and a report was issued to the institution. The report assessed the adequacy of procedures employed by the institution in appointing stenographic reporting services for oral hearings. Inadequacies in the following areas were highlighted in the report:

- obtaining transcripts of hearings;
- specifying retention policies and disposal methods with respect to records relating to the hearings; and
- physical security measures employed by the institution and reporting services with respect to records related to hearings.

The report included recommendations for ways of improving procedures to ensure compliance with the privacy provisions in Part III of the *Act*. The recommendations were based on the assumption that reporting services, rather than the institution, would retain physical custody of the actual notes and recordings of hearings, and that the reporting services would produce transcripts when requested.

The report recommended that the institution should have written agreements with all of its outside reporting services. These agreements would:

- address issues regarding the obtaining of transcripts and the retention, disposal and security of personal information in the reporting services' possession; and
- ensure the institution's compliance with the requirements of the *Act*, regulations under the

*Act*, and guidelines issued by the Management Board of Cabinet under subsection 40(4) of the *Act*, and the *Archives Act*.

The IPC is currently in the process of preparing guidelines on the use of verbatim reporting services at various administrative hearings, for distribution to all provincial administrative tribunals.

### Investigations Arising from Complaints

In 1990, a total of 69 investigations were initiated in response to complaints from members of the public that their privacy had been invaded, or that an institution was in breach of a provision of the *Act*. Most of these complaints dealt with situations where a member of the public felt that an institution had improperly disclosed personal information. A number of these cases are described below.

One complaint dealt with the Ministry of Health's practice of collecting a physician's personal OHIP number when the physician applied for an OHIP billing number. It was determined that the Ministry did not have the authority to collect this personal information and, as a result of the investigation, the Ministry discontinued the practice of collecting personal OHIP numbers from physicians.

In another case, a faculty member at a community college complained that the public release of a student evaluation survey of teachers invaded his privacy. The results of the evaluation were sent to the members of the faculty, identifying names of the faculty, the courses they taught, and the grade point average assigned to the teacher. It was determined that the disclosure of this personal information did, in fact, breach the *Act*. As a result of the complaint, the college suspended the survey and informed the IPC that they were purging the database that had been generated from the information gathered through the survey.

An employee of Ontario Hydro complained to the IPC about the institution's practice of including his social insurance number on his attendance form. As a result of our investigation, Ontario Hydro agreed to suppress the printing of gender identification and social insurance numbers on these forms.

Another complainant, who was an employee of a school operated by the Ministry of Education, alleged that other staff members had improperly disclosed personal information about her work history and attendance to a private investigator. Following our investigation, we concluded that the information in question had not been recorded, and was, therefore, not covered by the *Act*. However we expressed concern that, despite the fact that it was not recorded information, caution should be exercised by employees when disclosing information that, if recorded, would constitute an improper disclosure under the *Act*.

In a case involving a hospital administered by the Ministry of Health, the complainant alleged that the ministry had improperly contacted someone for a job reference check that had not been consented to by the complainant. The investigation confirmed the complainant's allegations, and our report recommended that the institution develop a formal policy dealing with the issue of disclosure of personal information in the context of providing references for former and current employees.

Finally, another complaint involved the stamping of an inmate's outgoing mail by the Ministry of Correctional Services. We found that the correctional facility had stamped a number of the inmate's letters with the name of the centre. As a result of this investigation, the practice has now been discontinued, and a notice has been sent to all appropriate ministry staff advising them of the proper procedures to be followed.

## Compliance Reviews

In order to comply with the privacy protection provisions of the *Act*, institutions must undertake a thorough review of how they collect, use, disclose and dispose of personal information in their custody or under their control, and adjust records management practices to conform with the requirements of the *Act*. To be effective, the *Act's* privacy provisions must be implemented systematically across all branches and departments of an institution.

To ensure that the *Act* is being adhered to, the Compliance department undertakes comprehensive reviews of selected institutions, choosing one or more areas within the institution and reviewing information management practices for compliance with the various provisions of Part III of the *Act*.

The first comprehensive review undertaken by the IPC involved the flow of AIDS-related personal information in the a number of institutions. The Compliance department reviewed the Public Health Laboratories and Public Health Branch of the Ministry of Health, as well as three local health units: Simcoe County District Health Unit, North York Health Unit, and East York Health Unit. The review also included the Reportable Disease Information System (RDIS), a computerized system used to link the various organizations.

The objectives of the review were to ensure that AIDS-related personal information was:

- collected in accordance with the *Act*;
- processed in such a manner that records were accurate and up-to-date, as stipulated by the *Act*;
- retained and disposed of in accordance with the *Act* and the regulations made thereunder;
- used and disclosed in accordance with the *Act*; and
- stored in a secure manner.



The review revealed that, for the most part, the various institutions were in compliance with the privacy provisions of the *Act*. Most recommendations arising from the review dealt with the strengthening of administrative and operational procedures to ensure more effective implementation of the *Act's* privacy provisions.

Some of the more significant recommendations included:

- using reputable courier services rather than regular mail to send all HIV test results;
- ensuring that institutions have records retention and disposal policies that conform to the requirements of the *Act* and regulations;
- ensuring that proper consent is obtained from a patient to conduct HIV antibody tests;
- ensuring that only necessary personal information is requested on certain forms;
- instituting tracking systems for transfers of AIDS-related personal information within and between institutions;
- amending the *Health Protection and Promotion Act* to expressly authorize Medical Officers of Health to indirectly collect personal information on the contacts of individuals with communicable diseases;
- ensuring that places where AIDS-related personal information is kept are locked and access restricted to authorized personnel;
- requiring the Ministry of Health not to ask that an HIV seropositive individual's name be reported to it;
- requiring the Ministry of Health to discontinue its collection of personal identifiers associated with AIDS-related personal information.

A second comprehensive review was conducted at the Ministry of Government Services' Records Centre, the depository used by government institutions to store inactive records. The Records Centre plays a central role in the retrieval process

of institutional records, and in providing for the security of records, many of which contain personal information. The review focused on the transfer, retrieval, return and disposal of institutional records during 1989.

It should be pointed out that the originating institutions retain custody and control of their records after they have been transferred to the Records Centre and until such time as they are either destroyed or transferred to the Ontario Archives. Therefore, in order to fully evaluate the practices of the Records Centre, it was necessary to review the records management systems of a number of institutions to determine how well they integrate with the Record Centre.

Four institutions were selected: the Ministry of the Attorney General, the Ministry of Housing, the Workers' Compensation Board and the Archives of Ontario. Reviews of the first three institutions were completed during 1990.

The reviews concluded that although the institutions' records management systems operated reasonably well, some improvements in administrative and operational procedures were warranted.

One of the more significant recommendations arising from the review was that institutions should adhere to the disclosure provisions of the *Act* with respect to personal information under their control, regardless of the fact that it may be physically located at the Records Centre.

Another recommendation suggested that, when requesting records from the Records Centre, institutions provide greater detail in order to facilitate retrieval. Specifically, it was recommended that institutions provide more information in their retention schedules in order to facilitate the storage, retrieval and ultimate disposal of records sent to the Records Centre.

The review of the Archives of Ontario introduced a number of issues unique to the mandate of that institution, which are expected to be resolved early in 1991.

## Commissioner's/Assistant Commissioners' Recommendations

In accordance with subsection 58(2)(c) of the *Act*, the Commissioner is required to make recommendations with respect to the practices of particular institutions. Outlined below are some recommendations of the Commissioner and the Assistant Commissioners.

In Order 146, the appellant requested access to his health records over a four-year time period. The institution identified two areas where the records were likely to reside. Following a search of these two areas, the institution advised the appellant that access to the records could not be provided, because the records did not exist. The Commissioner assigned a Compliance Officer to review the steps taken by the institution in its efforts to locate the requested records. Although no further records were found and the appeal was dismissed, the Commissioner expressed concern about the record-keeping system and asked the institution to produce clearly written guidelines for the maintenance of personal information held by the institution. These guidelines would help the institution ensure that personal information in its custody or control was maintained for the period of time indicated in the institution's record retention schedules.

In Order 181, the appellant requested access to copies of all press releases pertaining to lottery winners over the previous six months. The institution denied access to the records, claiming that the press releases had been distributed to

local news media for publication at their discretion. The institution later changed the basis for its decision to deny access to the record, claiming that disclosure of the records would constitute an unjustified invasion of the personal privacy of the lottery winners. The Assistant Commissioner agreed with the latter claim, and upheld the institution's decision not to disclose the records. As well, he recommended that the institution review its practice of giving the name and city or town of residence of the winners of specific lotteries to the public, in the absence of the consent of the winners, to determine if this practice is in accordance with the *Act*.

In Order 182, the appellant requested access to all documentation pertaining to a sexual harassment case against himself. The institution granted partial access to the records, exempting personal information of other individuals, and information that could interfere with the investigation that was underway at that time. In balancing the interests of the appellant and the affected parties, the Assistant Commissioner found in favour of the appellant and ordered the institution to disclose the information.

As the nature of a sexual harassment investigation raises concerns from both the access and privacy perspectives, the Assistant Commissioner made several recommendations regarding the way in which the investigations are to be carried out. If these are followed, they will assist the institution in ensuring that the complainant, the person complained against, and any witnesses who may be interviewed, will be treated with "meticulous fairness".



# SECTION 59: OTHER ACTIVITIES

## Three-year Review

On the occasion of the three-year review of the provincial *Freedom of Information and Protection of Privacy Act, 1987*, the Office of the Information and Privacy Commissioner prepared a brief for presentation to the Standing Committee on the Legislative Assembly. This brief included a document entitled "Suggested Changes to the *Freedom of Information and Protection of Privacy Act, 1987*" which describes the IPC proposals.

The report sets out three types of proposed changes to the *Act*. The first are "technical changes", which are prompted largely as a result of faulty legislative drafting, and do not affect substantive rights. The second type of suggested changes have been classified as "clarification changes" and could affect substantive rights. They are considered necessary in order to make the *Act* work more effectively. The third part of the report details "policy changes" which affect substantive rights and may result in changes in the way decisions are made. Several "policy change" suggestions that touch on the substantive provisions of the *Act* are highlighted below.

Subsection 52(6) of the *Act* gives the head of an institution the authority to require the Commissioner to inspect a record at the ministry or agency. It is the practice, in the vast majority of appeals, for the institution to forward a copy of the relevant record(s) to the IPC offices. However it is possible, given the *Act's* present wording, that a head could require the Commissioner and IPC staff to view all records relating to every appeal at the institution's premises. This is both impractical and clearly not the intent of the legislation. Therefore, the IPC suggests that this section be amended to restrict on-site examination of records to exceptional circumstances where it would not be practical to reproduce the record by reason of its length or nature.

The *Act* provides that where an institution does not respond to a request for access within the 30-day time period, the head is deemed to have refused access. However, if the deemed refusal is

appealed, no penalty is available for failure to adhere to the statutory time limits, and therefore, the institution has little incentive to comply. To address this deficiency, the IPC suggests that a subsection be added to the *Act* which allows the Commissioner, in a deemed refusal situation, to require the head to waive fees which would otherwise be recoverable.

The *Act*, in setting out the various privacy protection provisions, is largely silent regarding an institution's obligation to ensure the security of personal information. Since institutions must consider security-related matters in order to fully comply with the privacy provisions of the *Act*, the IPC feels this obligation should be explicitly acknowledged and addressed in the Legislature.

The IPC presentation also includes a suggested change that would require all correspondence to the IPC from minors and those in correctional institutions or psychiatric facilities to be kept confidential. The need for confidentiality is vital, and will ensure that these people are more fully able to exercise their rights under the *Act*.

Another significant issue concerns the use of mailing lists. Lists of individuals' names and addresses are compiled almost routinely by organizations for a variety of purposes, but principally for commercial gain. While Part III of the *Act* recognizes and protects personal privacy by restricting the use and disclosure of information, the protection may not extend far enough to include mailing lists. The IPC suggests that a sub-clause be added to the *Act* which would include mailing lists to the category of information that, when released, is presumed to constitute an unjustified invasion of personal privacy.

The brief includes a number of recommendations which concern the extension of the powers of the Commissioner.

The IPC recommends that the Commissioner be authorized to extend the period for filing an appeal beyond the 30-day time limit, in special circumstances. In our view, as long as the exer-

cise of discretion is restricted to exceptional cases, the underlying principles of the *Act* are better served by expressly authorizing the Commissioner to extend the time period. Concerns about equity and justice should prevail over strict adherence to time limits.

The IPC also suggests that consideration be given to the following two related amendments. First, the *Act*, while stating that the Commissioner can make an order disposing of an appeal, does not explicitly provide that an action or decision of the Commissioner is final and conclusive. It is clear from a review of the debates when the *Act* was originally passed, that the Legislature intended to establish the Commissioner as the ultimate decision-maker for appeals. The IPC proposes that an express provision to this effect, commonly referred to as a "privative clause", be included in the legislation.

Second, the IPC recommends that the Commissioner be given express authority to reconsider a decision or revoke an order, in exceptional circumstances. This would provide the necessary flexibility to correct the outcome of an appeal where an error has been made, and would eliminate the need for judicial review proceedings.

These two suggested amendments are consistent with provisions found in the enabling legislation for tribunals performing comparable functions to that of the Commissioner.

The IPC also recommends that the *Act* give the Commissioner explicit authority to investigate and review activities of institutions that may be in breach of the privacy principles of the *Act*. The *Act* imposes a duty on the Commissioner to perform certain functions, which implicitly requires the authority to investigate complaints and review information management practices of institutions. The proposed amendments codify this authority, following precedents found in other jurisdictions which have similar privacy protection legislation.

Finally, the IPC proposes that the Commissioner's order-making powers be extended in the area of privacy protection. At present, these powers are restricted to ordering an institution to cease a personal information collection practice, or to destroy collections of personal information. The IPC believes this authority is not sufficient to adequately ensure the proper management of personal information, and that the Commissioner should also be given authority to order an institution to cease a use, disclosure or retention practice that contravenes the *Act*.

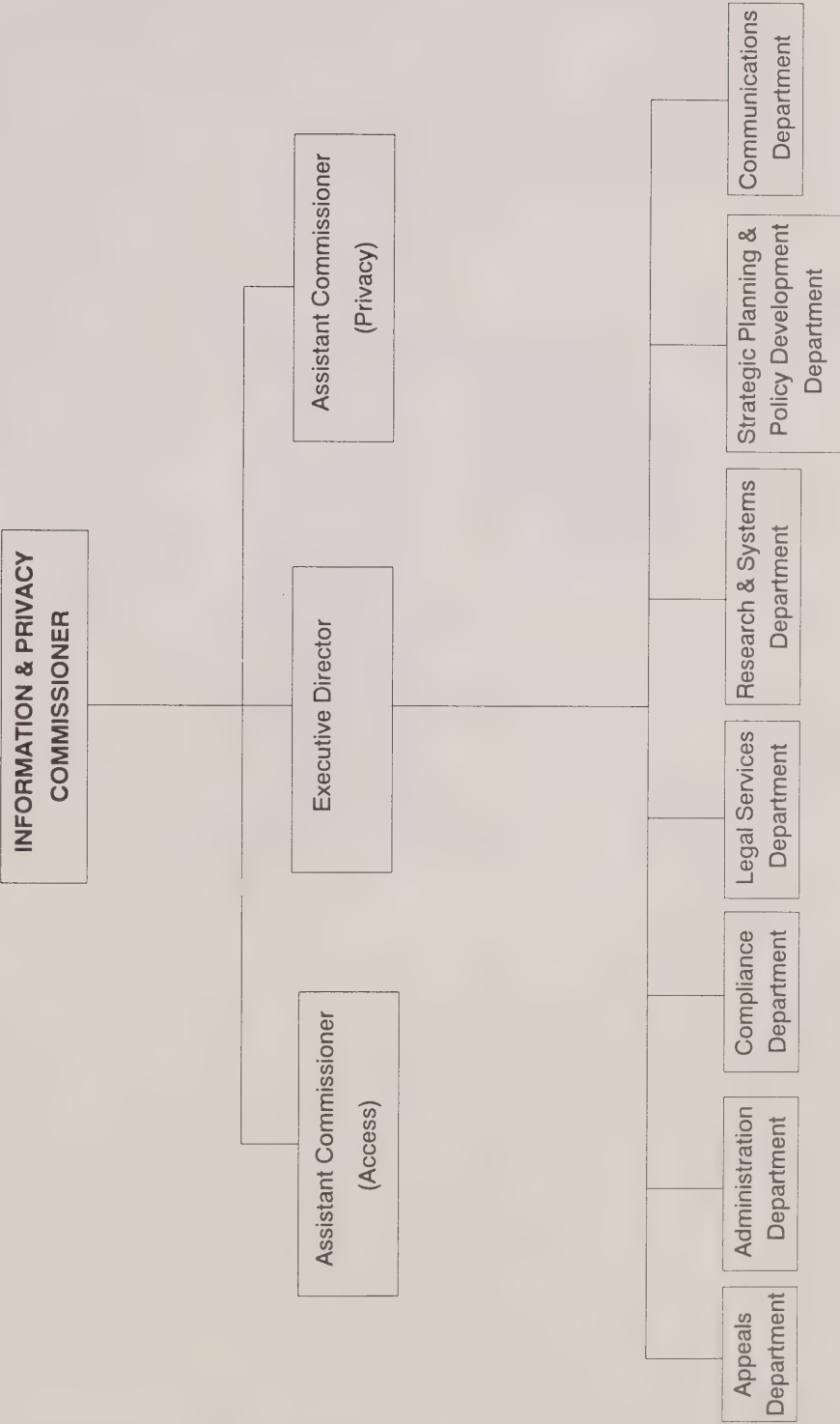
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## APPENDIX A

### ORGANIZATION CHART











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APPENDIX B

**FINANCIAL STATEMENTS  
1989-90**







OFFICE OF THE PROVINCIAL AUDITOR  
BUREAU DU VÉRIFICATEUR PROVINCIAL

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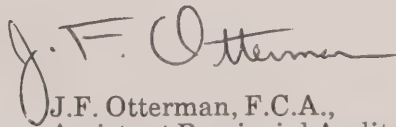
To the Information and Privacy Commissioner  
and to the Speaker of the Assembly.

I have audited the statement of expenditure of the Office of the Information and Privacy Commissioner for the year ended March 31, 1991. This financial statement is the responsibility of the Commission's management. My responsibility is to express an opinion on this financial statement based on my audit.

I conducted my audit in accordance with generally accepted auditing standards. Those standards require that I plan and perform an audit to obtain reasonable assurance whether the financial statement is free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statement. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation.

In my opinion, this financial statement presents fairly, in all material respects, the expenditures of the Commission for the year ended March 31, 1991 in accordance with the accounting policies described in note 2 to the financial statement.

Toronto, Ontario,  
May 14, 1991

  
J.F. Otterman, F.C.A.,  
Assistant Provincial Auditor





**OFFICE OF THE INFORMATION AND  
PRIVACY COMMISSIONER**

**Financial Statement  
for the year ended March 31, 1991**



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OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

Statement of Expenditure  
for the year ended March 31, 1991  
(Note 3)

	1991 \$	1990 \$
Salaries and wages	3,101,987	2,105,291
Employee benefits (note 4)	414,124	263,774
Transportation and communication	140,164	89,751
Services	1,097,453	573,949
Supplies and equipment	<u>834,456</u>	<u>364,174</u>
	<u>5,588,184</u>	<u>3,396,939</u>

See accompanying notes to financial statement.

Approved:

  
Information and Privacy Commissioner

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## **OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER**

### **Notes to Financial Statement March 31, 1991**

#### **1. GENERAL**

The Information and Privacy Commissioner is responsible for ensuring that Ontario government and municipal institutions comply with the Freedom of Information and Protection of Privacy Act, 1987 and the Municipal Freedom of Information and Protection of Privacy Act, 1989 and apply the standards of privacy protection set out in the Acts. As Commissioner, he may review decisions made by government institutions where access to information has been denied to a member of the public. Upon investigating the circumstances of the appeal, he has the final authority to deny or to order the disclosure of the requested information.

#### **2. SIGNIFICANT ACCOUNTING POLICIES**

##### **(a) Basis of accounting**

The Office uses a cash basis of accounting modified to allow an additional 30 days to pay for debts incurred during the period just ended.

##### **(b) Fixed assets**

Expenditures on fixed assets are expensed in the year of acquisition.

#### **3. EXPENDITURE**

Expenses are paid out of moneys appropriated by the Legislature of the Province of Ontario.

#### **4. PENSION PLAN**

The Office of the Information and Privacy Commissioner provides pension benefits for its permanent employees through participation in the Public Service Pension Fund established by the Province of Ontario. Pension benefits for the Information and Privacy Commissioner are provided through the Legislative Assembly Retirement Allowance Account. The Office's share of contributions to the Fund and Account during the year was \$202,700 (1990 - \$116,800) and is included in employee benefits in the statement of expenditure. This amount includes current contributions and additional payments to cover the Office's share of the Fund's estimated unfunded liabilities on January 1, 1990. These additional payments will continue over the next 40 years.







# BUREAU DU COMMISSAIRE À L'INFORMATION ET À LA PROTECTION DE LA VIE PRIVÉE

Notes afférentes à l'état financier  
31 mars 1991

## 1. GÉNÉRALITÉS

Le commissaire à l'information et à la protection de la vie privée veille à ce que les diverses institutions du gouvernement de l'Ontario et les institutions municipales se conforment à la Loi de 1987 sur l'accès à l'information et la protection de la vie privée et à la Loi de 1989 sur l'accès à l'information municipale et la protection de la vie privée et respectent les normes de protection de la vie privée énoncées dans lesdites lois. À titre de commissaire, il peut étudier les décisions prises par lesdites institutions qui refusent à un particulier l'accès à des renseignements. Après examen des circonstances de l'appel, il a le pouvoir final de refuser ou d'ordonner la divulgation des renseignements demandés.

## 2. PRINCIPES COMPTABLES IMPORTANTS

- a) Méthode de comptabilité
- Le Bureau utilise une méthode de comptabilité de caisse modifiée permettant une prolongation de 30 jours pour acquitter les dettes engagées au cours de la période qui vient de se terminer.

- b) Immobilisations
- Les dépenses en immobilisations sont imputées à l'exercice au cours duquel elles sont engagées.

## 3. DÉPENSES

Les dépenses sont acquittées à même les fonds affectés par l'Assemblée législative de l'Ontario.

## 4. RÉGIME DE RETRAITE

Le Bureau du commissaire à l'information et à la protection de la vie privée offre des rentes de retraite à ses employés permanents en leur permettant de participer à la Caisse de retraite des fonctionnaires établie par la province de l'Ontario. Les rentes de retraite pour le commissaire à l'information et à la protection de la vie privée sont offertes par l'entremise du Compte des allocations de retraite des députés à l'Assemblée législative. Les cotisations versées par le Bureau à ladite Caisse et audit Compte au cours de l'année s'élèvent à 202 700 \$ (1990 - 116 800 \$) et font partie des avantages sociaux des employés dans l'État des dépenses. Cette somme comprend les cotisations actuelles et les versements supplémentaires pour couvrir la part du Bureau de la dette non provisionnée estimative de la Caisse au 1<sup>er</sup> janvier 1990. Ces versements supplémentaires continueront au cours des 40 prochaines années.

**BUREAU DU COMMISSAIRE À L'INFORMATION  
ET  
À LA PROTECTION DE LA VIE PRIVÉE**

**État des dépenses  
pour l'année le 31 mars 1991  
(note 3)**

	1991	1990
	\$	\$
Salaires et traitements	3,101,987	2,105,291
Avantages sociaux (note 4)	414,124	263,774
Transport et communications	140,164	89,751
Services	1,097,453	573,949
Fournitures et matériel	<u>834,456</u>	<u>364,174</u>
	<u>5,588,184</u>	<u>3,396,939</u>

Voir les notes afférentes à l'état financier.

Approuvé par:

Le commissaire à l'information et à  
la protection de la vie privée de l'Ontario



**BUREAU DU COMMISSAIRE À L'INFORMATION  
ET  
À LA PROTECTION DE LA VIE PRIVÉE**

**État financier  
pour l'année terminée le 31 mars 1991**







OFFICE OF THE PROVINCIAL AUDITOR  
BUREAU DU VÉRIFICATEUR PROVINCIAL

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Au commissaire à l'information et à la protection de la vie privée  
et au président de l'Assemblée législative

J'ai vérifié l'état des dépenses du bureau du commissaire à l'information et à la protection de la vie privée pour l'exercice terminé le 31 mars 1991. Cet état financier est la responsabilité de la Commission. Ma responsabilité se borne à exprimer une opinion sur l'état financier d'après ma vérification.

J'ai effectué ma vérification conformément aux normes généralement reconnues qui exigent que je planifie et effectue une vérification pour m'assurer que l'état financier ne comporte aucune déclaration inexacte de faits importants. Une vérification s'effectue au moyen d'examen, de tests et de preuves justifiant les sommes et l'information dans l'état financier. Il faut également effectuer une évaluation des principes comptables utilisés et des estimations importantes faites par la direction, ainsi qu'évaluer la présentation générale de l'état financier.

À mon avis, le présent état financier présente fidèlement, dans tous les aspects importants, les dépenses de la Commission pour l'exercice terminé le 31 mars 1991, selon les principes comptables décrits à la note 2 de l'état financier.

Le vérificateur provincial adjoint,  
J.F. Otterman, F.C.A.

Toronto, Ontario  
le 14 mai 1991

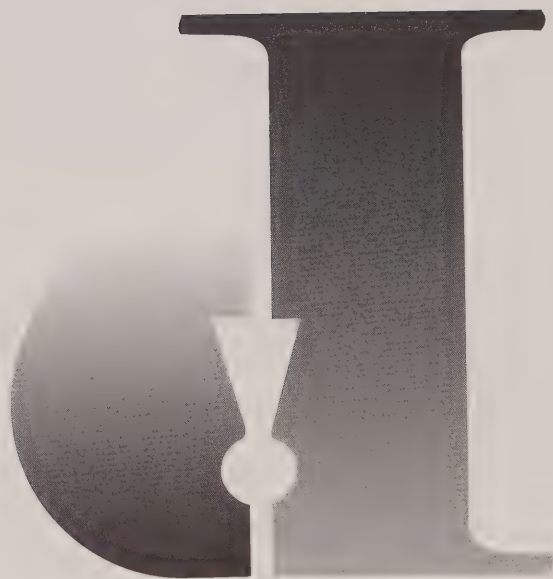


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**ÉTATS FINANCIERS**  
**1989-90**

**ANNEXE B**

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**COMMISSAIRE À L'INFORMATION  
ET À LA PROTECTION  
DE LA VIE PRIVÉE**

Commissaire adjoint  
(accès à l'information)

Directeur administratif

Commissaire adjoint  
(protection de la vie privée)

Service des  
appels

Service  
d'administration

Service de  
vérification

Service  
juridique

Service de la recherche  
et des systèmes

Service de  
planification stratégique  
et élaboration  
des politiques

Service des  
communications





**ORGANIGRAMME**

ANNEXE A

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ciales. Bien que la partie III de la loi reconnaisse et protège la vie privée en restreignant l'utilisation et la divulgation de l'information, la protection ne s'étend pas assez loin pour englober les listes d'envoi postal. Le bureau du commissaire proposerait que l'on ajoute à la loi un alinéa qui inclurait les listes d'envoi postal dans la catégorie des renseignements dont la divulgation est réputée constituer une atteinte injustifiée à la vie privée.

Le mémoire comprend un certain nombre de recommandations visant l'élargissement des pouvoirs du commissaire.

Le bureau du commissaire recommande que le commissaire soit autorisé dans des circonstances particulières à proroger le délai imparti pour le dépôt d'un avis d'appel au-delà de 30 jours. À notre avis, à condition que l'exercice de ce pouvoir discrétionnaire soit limité aux cas exceptionnels, les principes fondamentaux de la loi seront mieux servis par l'autorisation expresse donnée au commissaire de proroger le délai. Les soucis d'équité et de justice devraient l'emporter sur la stricte observation des délais impartis.

Le bureau du commissaire propose également que l'on se penche sur les deux modifications connexes suivantes. En premier lieu, bien que la loi stipule que le commissaire peut rendre une ordonnance en résolution d'un appel, elle ne déclare pas explicitement qu'une mesure ou une décision du commissaire est concluante et sans appel. L'examen des délibérations qui ont entouré l'adoption initiale de la loi montre clairement que le législateur avait l'intention de donner au commissaire un pouvoir de décision définitif dans le cas des appels. Le bureau du commissaire propose d'insérer dans la loi une disposition qui exprime à cet effet, du genre que l'on appelle couramment « clause restrictive ».

En second lieu, le bureau du commissaire recommande que l'on accorde au commissaire le pouvoir, dans des circonstances exceptionnelles, de reconsidérer une décision ou de révoquer une ordonnance. Cela lui donnerait la souplesse

nécessaire pour redresser l'issue d'un appel lorsqu'une erreur a été commise et éliminerait le besoin d'une révision judiciaire.

Ces deux modifications proposées sont conformes à celles que l'on trouve dans la loi habilitante à l'intention de tribunaux s'acquittant de fonctions comparables à celles du commissaire.

Le bureau du commissaire recommande aussi que la loi donne au commissaire le pouvoir explicite de faire des enquêtes et examens sur les activités d'institutions susceptibles de violer les principes de la loi en matière de protection de la vie privée. La loi impose au commissaire l'obligation de s'acquitter de certaines fonctions qui requièrent implicitement le pouvoir d'enquêter sur des plaintes et d'examiner les pratiques de gestion des renseignements des institutions. La modification proposée codifie ce pouvoir, en se fondant sur les pratiques d'autres territoires de compétence qui ont des lois analogues touchant la protection de la vie privée.

En dernier lieu, le bureau du commissaire propose un élargissement des pouvoirs du commissaire de rendre des ordonnances en matière de protection de la vie privée. À l'heure actuelle, ces pouvoirs se limitent à ordonner à une institution de cesser la pratique de recueillir des renseignements personnels ou de détruire ses dossiers. Le bureau du commissaire croit que ce pouvoir n'est pas suffisant pour assurer la gestion pertinente des renseignements personnels et que le commissaire devrait avoir également le pouvoir d'ordonner à une institution de cesser une pratique d'utilisation, de divulgation ou de conservation qui contrevient à la loi.

## Examen triennal

À l'occasion de l'examen triennal de la Loi de 1987 sur l'accès à l'information et la protection de la vie privée visant les institutions provinciales, le bureau du commissaire à l'information et à la protection de la vie privée a rédigé un mémoire destiné au Comité permanent de l'Assemblée législative. Ce mémoire comprenait un document intitulé «Suggested Changes to the Freedom of Information and Protection of Privacy Act, 1987», décrivant ses propositions.

Le rapport énonce trois types de modifications proposées à la loi. Le premier consiste en des modifications sur des points techniques visant, dans une large mesure, à rectifier une rédaction défectueuse de la loi, mais qui ne touchent pas aux droits de fond. Le deuxième type de modifications consiste en des classifications susceptibles de modifier des droits de fond. Elles sont estimées nécessaires pour un meilleur fonctionnement de la loi. La troisième partie du rapport énonce en détail des modifications de politiques qui touchent les droits de fond et peuvent donner lieu à des changements dans la façon dont les décisions sont prises. On trouvera ci-dessous plusieurs suggestions de modifications de politiques qui visent des dispositions de fond de la loi.

Le paragraphe 52 (6) de la loi donne à la personne responsable d'une institution le pouvoir d'exiger que le commissaire inspecte un document au ministère ou à l'organisme en cause. L'usage veut que, dans la grande majorité des appels, l'institution envoie aux bureaux du commissaire une copie du document en cause. Il est toutefois possible, étant donné le libellé actuel de la loi, que la personne responsable exige que le commissaire et son personnel examinent tous les documents relatifs à chaque appel dans les locaux du ministère. Cela n'est pas pratique et n'est certainement pas l'intention du législateur. Le bureau du commissaire propose donc une modification de cet article pour restreindre la consultation sur place des documents à des cir-

Dans son énoncé des diverses dispositions sur la protection de la vie privée, la loi est pour une bonne part muette quant à l'obligation d'une institution de veiller à la sécurité des renseignements personnels. Étant donné que les institutions doivent se pencher sur des questions en rapport avec la sécurité pour observer intégralement les dispositions de la loi en matière de protection de la vie privée, le bureau du commissaire estime qu'il y aurait lieu que le législateur reconnaisse explicitement cette obligation dans la loi.

La loi stipule que, si une institution ne répond pas à une demande d'accès dans le délai de 30 jours impartis, la personne responsable est réputée avoir refusé l'accès au document. Toutefois, si le refus réputé est porté en appel, aucune sanction n'est prévue pour l'omission d'observer le délai impartis, aussi l'institution n'est-elle guère encouragée à l'observer. Pour combler cette lacune, le bureau du commissaire propose que l'on ajoute à la loi un paragraphe permettant au commissaire, en cas de refus réputé, d'exiger que la personne responsable renonce aux frais qu'elle pourrait normalement percevoir.

Il ne serait pas pratique de reproduire le document en constances exceptionnelles dans lesquelles il ne raison de sa longueur ou de sa nature.

L'exposé du bureau du commissaire comporte aussi une proposition de modification qui exigerait de garder confidentielle toute correspondance adressée au bureau du commissaire par des mineurs ou des personnes placées dans des établissements correctionnels ou psychiatriques. Le besoin de conserver un caractère confidentiel à cette correspondance est vital et fera en sorte que ces personnes soient pleinement en mesure d'exercer les droits que la loi leur confère.

L'utilisation de listes d'envoi postal constitue une question importante. Des organismes dressent presque couramment des listes de noms et adresses de particuliers pour diverses fins, mais principalement pour des raisons comm-



entérine la décision de ne pas divulguer les documents. Il a, de même, recommandé que l'institution réexamine sa pratique de donner au public le nom et le lieu de résidence des gagnants de loteries déterminées, en l'absence du consentement des gagnants, pour décider si cette pratique est conforme à la loi.

Dans l'ordonnance n° 182, l'appelant demandait accès à toute la documentation relative à une plainte de harcèlement sexuel portée contre lui. L'institution avait accordé un accès partiel aux documents, à l'exception de renseignements personnels d'autres particuliers et de renseignements susceptibles d'entraver l'enquête en cours à ce moment-là. En soupesant les intérêts de l'appelant et ceux des parties concernées, le commissaire adjoint a tranché en faveur de l'appelant et ordonné à l'institution de divulguer les renseignements.

Comme la nature même d'une enquête sur le harcèlement sexuel suscite des préoccupations à la fois du point de vue de l'accès et du point de vue de la protection de la vie privée, le commissaire adjoint a fait plusieurs recommandations touchant la façon dont ces enquêtes doivent être menées. Si ces recommandations sont suivies, elles aideront l'institution à faire en sorte que le plaignant, la personne dont on se plaint, et tout témoin qui peut être entendu soient traités en toute équité.

## Recommandations du commissaire et des commissaires adjoints

Conformément à l'alinéa 58 (2) c) de la loi, le commissaire est tenu de faire des recommandations quant aux pratiques d'institutions particulières. On trouvera ci-dessous quelques recommandations du commissaire et des commissaires adjoints.

Dans l'ordonnance n° 146, l'appelant demandait accès à ses dossiers de santé sur une période de quatre ans. L'institution a identifié deux secteurs dans lesquels les documents avaient des chances de se trouver. À la suite de recherches dans ces deux secteurs, l'institution a fait savoir à l'appelant qu'on ne pouvait lui donner accès aux documents parce que ceux-ci n'existaient pas. Le commissaire a chargé un vérificateur de la conformité d'examiner les mesures prises par l'institution en vue de localiser les documents demandés. Bien que l'on n'ait pas trouvé de nouveaux documents et que l'appelant ait été rejeté, le commissaire a exprimé ses inquiétudes au sujet du système de conservation des documents et demandé à l'institution de rédiger des lignes directrices sur la conservation des renseignements personnels qu'elle détient. Ces lignes directrices aideront l'institution à faire en sorte que les renseignements personnels dont elle a la garde ou le contrôle soient conservés pendant la période indiquée dans les tableaux de conservation des documents de l'institution.

Dans l'ordonnance n° 181, l'appelant demandait accès à des copies de tous les communications de presse concernant les gagnants de loterie au cours des six derniers mois. L'institution a refusé l'accès, faisant valoir que les communications avaient été remis aux organes de diffusion locaux pour que ceux-ci les publient à leur discrétion. L'institution a ultérieurement changé le fondement de sa décision de refuser l'accès au document, faisant valoir que la divulgation des documents constituerait une atteinte injustifiée à la vie privée des gagnants de loterie. Le commissaire adjoint a accueilli ce dernier argument et

dossiers, il a donc fallu examiner les systèmes de gestion des documents d'un certain nombre d'institutions pour déterminer dans quelle mesure ces systèmes sont harmonisés avec ceux du Centre d'entreposage des dossiers.

On a choisi quatre institutions : le ministère du Procureur général, le ministère du Logement, la Commission des accidents du travail et les Archives publiques de l'Ontario. Les examens des trois premières institutions ont été réalisés en 1990.

Les examens ont conclu que, même si les systèmes de gestion des documents de ces institutions fonctionnaient plutôt bien, il était justifié d'apporter certaines améliorations aux procédures administratives et opérationnelles.

Une des recommandations les plus significatives auxquelles l'examen a donné lieu préconise que les institutions appliquent les dispositions de la loi en matière de divulgation concernant les renseignements personnels dont elles ont le contrôle, en dépit du fait que ces renseignements peuvent être matériellement situés au Centre d'entreposage des dossiers.

Une autre recommandation propose que lorsqu'elles demandent des documents au Centre d'entreposage des dossiers, les institutions fournissent plus de détails pour en faciliter la récupération. Précisément, il a été recommandé que les institutions fournissent plus de renseignements dans leur calendrier des délais de conservation en vue de faciliter l'entreposage, la récupération et la destruction définitive des documents envoyés au Centre d'entreposage des dossiers.

L'examen des Archives publiques de l'Ontario a suscité un certain nombre de questions particulières au mandat de cette institution. On prévoit qu'elles seront résolues au début de 1991.

ministère de la Santé ainsi que trois circonscriptions sanitaires locales : la circonscription sanitaire régionale du comté de Simcoe, la circonscription sanitaire de North York et celle de East York. L'examen a également porté sur le «Système informatif sur les maladies à déclaration obligatoire», système informatisé qui sert à relier différents organismes.

Les objectifs de l'examen étaient de s'assurer que les renseignements personnels liés au sida étaient :

- recueillis conformément à la loi,
- traités de telle sorte que les documents soient exacts et à jour, comme le stipule la loi,
- conservés et déclassés conformément à la loi et à ses règlements,
- utilisés et divulgués conformément à la loi,
- stockés d'une manière sûre.

L'examen a révélé que, dans la plupart des cas, les diverses institutions se conformaient aux dispositions de la loi en matière de protection de la vie privée. La plupart des recommandations formulées par suite de l'examen traitaient du renforcement des procédures administratives et opérationnelles en vue d'assurer une application plus efficace des dispositions de la loi en la matière.

Les recommandations suivantes sont parmi les plus importantes :

- recourir à des services de messagerie fiables plutôt qu'au service postal ordinaire pour envoyer tous les résultats de tests de dépistage du VIH,

- faire en sorte que les institutions aient des politiques de conservation et de déclassement des documents qui soient conformes aux exigences de la loi et de ses règlements, veiller à ce que l'on obtienne le consentement approprié du patient de procéder aux tests de dépistage des anticorps anti-VIH,

- veiller à ce que, sur certaines formules, on demande seulement les renseignements personnels nécessaires,
- établir des systèmes d'acheminement pour les transferts de renseignements personnels liés au sida au sein de l'institution et entre les institutions,

- modifier la *Loi sur la protection et la promotion de la santé* pour autoriser expressément les médecins-hygiénistes à recueillir indirectement des renseignements personnels sur les contacts des particuliers atteints de maladies transmissibles,

- veiller à ce que les endroits où sont gardés des renseignements personnels liés au sida soient verrouillés et que leur accès soit réservé au personnel autorisé;

- exiger que le ministère de la Santé ne demande pas de lui rapporter le nom d'une personne atteinte du VIH,

- exiger que le ministère de la Santé abandonne sa collecte d'identificateurs individuels en rapport avec les renseignements personnels liés au sida.

Un deuxième examen complet a eu lieu au Centre d'entreposage des dossiers du ministère des Services gouvernementaux, qui est le dépôt utilisé par les organismes publics pour entreposer leurs dossiers inactifs. Le Centre d'entreposage des dossiers joue un rôle central dans le processus d'extraction des documents institutionnels et dans la sécurité des dossiers dont un grand nombre renferment des renseignements personnels. L'examen visait surtout le transfert, la récupération, le retour et le déclassement des documents institutionnels en 1989.

Il y a lieu de souligner que les institutions continuent de servir la garde et le contrôle de leurs documents, même après le transfert des documents au Centre d'entreposage des dossiers, jusqu'à leur destruction ou leur transfert aux Archives publiques de l'Ontario. Pour évaluer entièrement les pratiques du Centre d'entreposage des



port a recommandé que l'institution adopte une politique officielle sur la divulgation de renseignements personnels dans le cadre des demandes de références pour des employés ou d'anciens employés.

Enfin, une autre plainte vise l'apposition d'un tampon par le ministère des Services correctionnels sur le courrier expédié par un détenu. Nous avons constaté que l'établissement correctionnel avait apposé sur un certain nombre de lettres du détenu un tampon portant le nom du centre. Par suite de cette enquête, la pratique en question a été abandonnée et un avis a été envoyé à tout le personnel concerné du ministère pour l'informer des procédures à suivre.

#### Examen de l'observation de la loi

En vue d'observer les dispositions de la loi en matière de protection de la vie privée, les institutions doivent procéder à un examen approfondi de la façon dont elles recueillent, utilisent, divulguent et détruisent les renseignements personnels dont elles ont le contrôle ou la garde. Elles doivent aussi rajuster leurs pratiques de gestion des documents pour les conformer aux exigences de la loi. Pour produire leur effet, les dispositions de la loi en matière de protection de la vie privée doivent être mises en oeuvre de façon systématique dans la totalité des directions et services de l'institution.

Pour vérifier si la loi est appliquée, le service de la vérification procède à des examens complets d'institutions sélectionnées, choisissant un ou plusieurs secteurs au sein de l'institution et examinant les pratiques de gestion de l'information pour voir si elles sont conformes aux diverses dispositions de la partie III de la loi.

Le premier examen complet entrepris par le bureau du commissaire visait la transmission de renseignements personnels liés au sida dans un certain nombre d'institutions. Le service de la vérification et la Direction de la santé publique du

Dans un autre cas, un membre du corps enseignant d'un collège communautaire prétend que la publication d'un sondage d'évaluation des enseignants auprès des étudiants constitue une atteinte à sa vie privée. Les résultats de l'évaluation ont été envoyés aux membres du corps enseignant, indiquant le nom des professeurs, les cours qu'ils donnent et la moyenne de points qui leur sont attribués. Il a été décidé qu'effectivement la divulgation de ces renseignements personnels violait la loi. Par suite de la plainte, le collège a suspendu le sondage et informé le bureau du commissaire qu'il purgeait la base de données produite à l'aide des renseignements recueillis dans le cadre du sondage.

Un employé d'Ontario Hydro se plaint au bureau du commissaire de la pratique de l'association lui demandant d'inscrire son numéro d'assurance sociale sur sa feuille de présence. Par suite de notre enquête, Ontario Hydro s'est engagée à supprimer de ses formulaires les mentions imprimées relatives au sexe et au numéro d'assurance sociale.

Une autre plainte est déposée par une employée d'une école relevant du ministère de l'Éducation, qui prétend que d'autres membres du personnel ont indûment divulgué à un enquêteur privé des renseignements personnels concernant ses antécédents professionnels et son assiduité. À la suite de notre enquête, nous avons conclu que les renseignements en question n'avaient pas été consignés et n'étaient donc pas couverts par la loi. Nous avons toutefois déclaré, à titre de mise en garde, que, même s'il ne s'agissait pas de renseignements consignés, les employés devaient prendre garde à ne pas divulguer de renseignements qui, s'ils étaient consignés, donneraient lieu à une divulgation interdite aux termes de la loi.

Dans une cause concernant un hôpital administratif par le ministère de la Santé, le plaignant prétend que le ministère a indûment contacté un tiers pour une vérification des références à laquelle le plaignant n'a pas consenti. L'enquête a confirmé les allégations du plaignant et notre rap-

la première ou être différente de celle qui a été d'abord rendue, sans égard au fait que les documents en cause peuvent être les mêmes.

### Enquêtes par suite d'un appel

En 1990, neuf enquêtes ont été entreprises pour résoudre des questions qui ont surgi au cours des appels. On en trouvera les grandes lignes ci-dessous.

L'appel 880099 (ordonnance n° 52) touchant la suffisance des procédures utilisées par l'institution pour garder le contrôle des notes ou transcriptions des sténographes judiciaires engagés pour couvrir les audiences orales menées par l'institution a soulevé un certain nombre de questions. Dans l'ordonnance n° 52, le commissaire demande à son service de la vérification de mener une enquête approfondie sur ces procédures pour s'assurer qu'elles sont conformes aux dispositions de la loi.

L'enquête du service de la vérification a été terminée en 1990 et un rapport a été envoyé à l'institution. Le rapport évalue la suffisance des procédures utilisées par l'institution quand elle engage des services de sténographes judiciaires pour des audiences orales. Il constate des insuffisances dans les domaines suivants :

- obtention de transcriptions des audiences,
- énoncé de politiques de conservation et de méthodes de classement relatives aux documents ayant trait aux audiences,
- mesures matérielles de sécurité prises par l'institution et par les services de sténographie relativement aux documents ayant trait aux audiences.

Le rapport recommande des moyens permettant d'améliorer les procédures pour assurer leur conformité aux dispositions de la partie III de la loi touchant la protection de la vie privée. Les recommandations reposent sur l'hypothèse que les services de sténographie, et non l'institution, conservent la garde matérielle des notes et en-

registraments des audiences et que les services de sténographie produisent des transcriptions sur demande.

Le rapport recommande que l'institution conclue des ententes écrites avec tous ses services de sténographie de l'extérieur. Ces ententes :

- traiteraient de questions comme l'obtention de transcriptions, ainsi que la conservation, le classement et la sécurité des renseignements personnels en possession des services de sténographie, et

- assureraient que l'institution observe les exigences de la loi, des règlements en application de la loi et des lignes directrices émises par le Conseil de gestion du gouvernement aux termes du paragraphe 40 (4) de la loi et de la Loi sur les archives publiques.

Le bureau du commissaire est en train de rédiger des lignes directrices sur l'utilisation de comptes rendus in extenso pour diverses audiences administratives en vue de leur distribution à tous les tribunaux administratifs provinciaux.

### Enquêtes par suite de plaintes

En 1990, 69 enquêtes ont été entreprises par suite de plaintes de particuliers qui faisaient valoir qu'il y avait eu atteinte à leur vie privée, ou qu'une institution avait enfreint une disposition de la loi. La plupart de ces plaintes visent des situations dans lesquelles un particulier estime qu'une institution a indûment divulgué des renseignements personnels. Un certain nombre de ces cas sont évoqués ci-dessous.

Une plainte traitait de la pratique du ministère de la Santé de demander le numéro personnel du RAMO du médecin lorsque celui-ci demande un numéro de facturation du RAMO. Il a été décidé que le ministère n'était pas habilité à recueillir ce renseignement personnel et, par suite de l'enquête, le ministère a abandonné la pratique de demander aux médecins leur numéro personnel du RAMO.

## Observation de la loi

### Appels

L'alinéa 58 (2) b) de la loi exige que le commissaire procède à une évaluation du degré d'observation de la Loi de 1987 sur l'accès à l'information et la protection de la vie privée par les institutions. En 1990, les ordonnances et recommandations du commissaire et du commissaire adjoint résultant des enquêtes ont continué d'orienter les institutions quant à l'interprétation de leurs responsabilités en vertu de la loi.

### Décisions rendues sur des appels

On trouvera ci-dessous la description de certaines ordonnances rendues en 1990 qui définissent des obligations des institutions en matière de procédure et qui concernent l'observation de la loi par les institutions.

L'ordonnance n° 158 énonce la responsabilité de l'institution qui refuse de donner accès à la totalité ou à une partie d'un document en vertu de l'article 26 de la loi. Le commissaire y déclare que, dans son avis de refus aux termes du sous-alinéa 29 (1) b) (ii), l'institution doit fournir à l'auteur de la demande des renseignements concernant les circonstances sur lesquelles la personne responsable fonde son refus d'accès. Le degré de précision avec lequel le document en cause est décrit influera sur la quantité de détails requis dans l'exposé des motifs et réciproquement. Si l'on donne ces renseignements à l'auteur de la demande, celui-ci sera en mesure de prendre une décision raisonnablement avisée quant à l'éventualité de faire appel de la décision de la personne responsable.

L'ordonnance n° 164 traite de la question de savoir si une institution a le droit, lorsqu'une demande est faite conformément à la loi, d'accorder à l'auteur de la demande un accès conditionnel au document. Dans cet appel, l'institution a donné à l'appelant une copie du document demandé. Toutefois, dans une lettre d'envoi, la

personne responsable déclarait clairement que le document était communiqué à l'appelant à la condition que celui-ci soit le seul à s'en servir : il lui était interdit de le communiquer à d'autres personnes. Dans son ordonnance, le commissaire déclare que, sauf l'alinéa 21 (1) e), qui renvoie à l'accès à des renseignements personnels à des fins de recherche, la loi ne renferme aucune disposition qui autorise la personne responsable à accorder un accès conditionnel à un document, dans une décision officielle en réponse à une demande présentée aux termes de la loi. La loi envisage que, si un accès est accordé à l'auteur d'une demande, cet accès est universel et que, sous réserve des limites imposées par d'autres lois, comme celles qui interdisent la diffusion écrite ou verbale, aucune restriction ne peut être imposée à l'utilisation que l'auteur de la demande peut faire du document.

L'ordonnance n° 189 traite de la responsabilité de l'institution qui proroge le délai de 30 jours imparti à l'article 26 pour répondre à une demande d'accès présentée aux termes de la loi. Le commissaire adjoint déclare que l'institution est tenue de fournir les motifs précis et détaillés invoqués pour proroger le délai en vertu du paragraphe 27 (1) de la loi. Bien que, dans certains avis de prorogation de délai, il ne soit peut-être pas possible de préciser les documents en cause (par exemple, une prorogation peut être nécessaire justement pour préciser les documents qui répondent à la demande), l'exigence que l'auteur de la demande reçoive un avis de prorogation de délai entraîne comme conséquence nécessaire que l'avis donne une certaine description des documents. Le degré de précision avec lequel le document est décrit influera sur la quantité de détails requis dans l'exposé des motifs et réciproquement.

L'ordonnance n° 202 tente de déterminer si la loi interdit à l'auteur d'une demande de présenter la même demande à plusieurs reprises. Le commissaire adjoint déclare que, si l'auteur d'une demande présente la même demande une seconde fois, l'institution doit y répondre et rendre une décision comme s'il s'agissait d'une nouvelle demande. Cette décision peut être la même que



TABLEAU 25 / GENRES D'AUTEURS DE DEMANDE PRENANT PART AUX APPELS\*

	1988	1989	1990	Total Nb %
Particuliers	226	240	466	932
Entreprise	21	25	63	109
Recherche	48	34	22	104
Média	19	34	20	73
Association	18	41	58	117
Autres	18	19	19	56
Total	350	393	648	1391
				100.0

\*Etant donné que, dans toutes les demandes de renseignements personnels et de rectification, l'auteur de la demande est un particulier ou son mandataire autorisé, tous les auteurs de demandes sont traités comme des particuliers.

TABLEAU 24 / STADE DE L'ENQUÊTE

	1988	1989	1990	TOTAL Nbre %
Ordonnances				
Décision de la personne responsable confirmée	63	52	18	133 40.3
Décision de la personne responsable confirmée en partie	5	27	33	65 19.7
Décision de la personne responsable non confirmée	11	36	16	63 19.1
Autre			7	7 2.1
Total des cas avec ordonnance	79	115	74	268 81.2
Autres cas				
Retirés	6	6	2	14 4.2
Réglés	8	34	6	48 14.6
Total des autres cas	14	40	8	62 18.8
Total des cas avec enquête	93	155	82	330 100.0

TABLEAU 22 / CAS RÉSOUS: STADE AUQUEL L'APPEL A ÉTÉ RÉSOLU

	1988	1989	1990	TOTAL Nbre %
Stade de la médiation	105	207	386	698
Stade de l'enquête	93	155	82	330
Total	198	362	468	1028
				100.0

TABLEAU 23 / STADE DE LA MÉDIATION

	1988	1989	1990	TOTAL Nbre %
Réglé	87	180	183	450
L'appelant a reçu un complément d'information	(43)	(107)	(87)	
L'explication de la loi a satisfait l'appelant	(44)	(71)	(90)	
Échappé à la compétence	7	0	2	9
Retiré	10	21	195	226
Abandonné	1	6	6	13
Total	105	207	386	698
				100.0

TABLEAU 21 / GENRES DE DÉCISIONS AYANT FAIT L'OBJET D'UN APPEL.\*

	1988	1989	1990	1991	1992
Refus d'accès partiel	111	127	141		
Refus d'accès total	87	130	218		
Documents inexistant	76	46	45		
Frais/estimation de frais	44	19	37		
Renseignements de tiers	15	13	41		
Prorogation du délai	10	28	21		
Mode d'accès	8	0	5		
Refus de confirmer ou de nier	6	6	8		
Rectification(s) refusée(s)	5	10	1		
Autres	17	38	143		
Total	379	417	660		

\*Le nombre total des décisions ayant fait l'objet d'un appel est supérieur au nombre total d'appel étant donné que certains appels constituent plusieurs décisions. Les chiffres reportés ci-dessus indiquent le nombre de fois où chaque décision a fait l'objet d'un appel.

TABLEAU 20 / GENRES D'APPELS

	1988		1989		1990	
	APPELS REÇUS	APPELS EXÉCUTÉS	APPELS REÇUS	APPELS EXÉCUTÉS	APPELS REÇUS	APPELS EXÉCUTÉS
Documents généraux	259	143	298	273	512	375
Renseignements personnels	86	53	85	80	127	91
Rectifications	5	2	10	9	9	2
Total	350	198	393	362	648	468



TABLEAU 19 / TOTAL DES RÉGLEMENTS DE TOUS LES APPELS

STADE DE LA MÉDIATION				APPEL DE L'AUTEUR DE LA DEMANDE				APPEL D'UN TIERS				TOTAL			
				Nbre				Nbre				Nbre			
				%				%				%			
				NBRÉ				NBRÉ				NBRÉ			
				%				%				%			
Réglé	178	47.0	5	71.4	183	47.4									
L'appelant a reçu un complément d'information	(83)		(4)		(87)										
L'explication de la loi a satisfait l'appelant	(89)		(1)		(90)										
Échappé à la compétence	2	0.5	0	0.0	2	0.5									
Retiré	193	50.9	2	28.6	195	50.5									
Abandonné	6	1.6	0	0.0	6	1.6									
Total	379	100.0	7	100.0	386	100.0									
STADE DE L'ENQUÊTE															
				NBRÉ				NBRÉ				NBRÉ			
				%				%				%			
				NBRÉ				NBRÉ				NBRÉ			
				%				%				%			
Ordonnances	17	23.6	1	50.0	18	24.3									
Décision de la personne responsable confirmée															
Décision de la personne responsable confirmée en partie	33	45.8	0	0.0	33	44.6									
Décision de la personne responsable non confirmée	15	20.8	1	50.0	16	21.6									
Autres	7	9.7	0	0.0	7	9.5									
Total des cas avec ordonnance	72	100.0	2	100.0	74	100.0									
Autres cas	8	100.0	0		8	100.0									
Retirés	2	25.0	0		2	25.0									
Réglés	6	75.0	0		6	75.0									
Total des cas avec enquête	80		2		82										
Total des cas résolus	459		9		468										

TABLEAU 18 / GENRES DE DÉCISIONS AYANT FAIT L'OBJET D'UN APPEL - 1990\*

	DOCUMENTS RÉGÉNÉRAUX	RENSEIGNEMENTS PERSONNELS	Nbre TOTAL	%
Refus d'accès partiel	83	58	141	21.4
Refus d'accès total	199	19	218	33.0
Documents inexistant	32	13	45	6.8
Frais/estimation de frais	29	8	37	5.6
Renseignements de tiers	39	2	41	6.2
Prorogation du délai	13	8	21	3.2
Mode d'accès	4	1	5	0.8
Refus de confirmer ou de nier	5	3	8	1.2
Rectification(s) refusée(s)	S.O.	1	1	0.2
Autres	130	13	143	21.7
Total	534	126	660	100.0

\*Le nombre total des décisions ayant fait l'objet d'un appel est supérieur au nombre total d'appel, étant donné que certains appels constituent plusieurs décisions. Les chiffres reportés ci-dessus indiquent le nombre de fois que chaque décision a fait l'objet d'un appel.

Secrétariat du Conseil de gestion	2	2	2	6
Total	2	2	2	6
Secrétariat des ressources humaines	0	1	0	1
Total	0	1	0	1
Services correctionnels	59	32	55	146
Total	59	32	55	146
Services gouvernementaux	1	38	174	213
Total	1	38	174	213
Services sociaux et communautaires	25	23	47	95
Comm. d'étude des services à l'enfance et à la famille	0	1	0	1
Commission de révision de l'aide sociale	0	1	0	1
Total	25	25	47	97
Solliciteur général	29	23	48	100
Total	29	23	48	100
Tourisme and Loisirs	2	3	0	5
Société des loteries de l'Ontario	0	4	0	4
Total	2	7	0	9
Transport	12	4	9	25
Total	12	4	9	25
Travail	27	14	7	48
Comm. des accidents du travail	2	2	2	6
Comm. des relations de travail de l'Ont.	0	1	1	2
Tribunal d'appel des accidents du travail	11	19	10	40
Commission de l'équité salariale	0	0	2	2
Total	4	36	22	98
Trésor et Économie	2	8	21	31
Société ontarienne du stade limitée	2	25	9	36
Total	4	33	30	67
Total	350	393	648	1391

\*Nous avons exclu les ordonnances provisoires des statistiques d'appels de 1989 qui figurent dans le présent tableau et dans les tableaux suivants.

	1988	1989	1990	Total des Appels
Développement du Nord et Mines	0	0	0	0
Comm. de transport Ontario Northland	0	1	0	1
Total	0	1	0	1
Education	8	3	7	17
Total	8	3	7	17
Energie	0	1	0	5
Ontario Hydro	8	5	4	13
Total	8	6	4	18
Environnement	13	4	20	37
Société ontarienne de gestion des déchets	2	0	0	2
Total	15	4	20	39
Formation professionnelle	5	3	3	11
Total	5	3	3	11
Industrie, Commerce et Technologie	11	5	2	18
Total	11	5	2	18
Institutions financières	8	13	12	33
Total	8	43	12	33
Logement	0	7	5	12
Total	0	7	5	12
Procureur général	21	16	22	59
Total	21	16	22	59
Revenu	6	3	56	66
Total	6	3	56	66
Richesses naturelles	4	11	7	22
Total	4	11	7	22
Santé	45	42	64	151
Conseil régional de santé de Toronto	0	1	0	1
Total	45	43	64	152

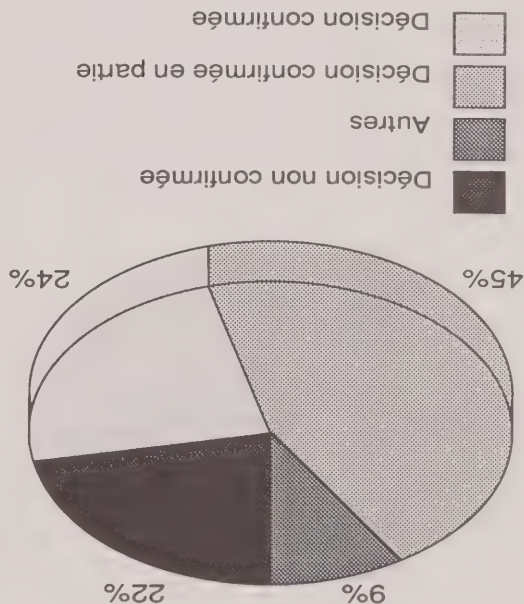
TABLEAU 17 / MINISTÈRES ET ORGANISMES IMPLIQUÉS DANS LES APPELS REÇUS\*

	1988	1989	1990	Total des Appels
Affaires civiques	0	0	0	0
Comm. ont. des droits de la personne	3	14	10	27
Total	3	14	10	27
Affaires municipales	3	4	6	13
Total	3	4	6	13
Agriculture et Alimentation	17	3	2	22
Total	17	3	2	22
Bureau du Conseil des ministres	1	5	4	10
Total	1	5	4	10
Collèges et Universités	1	2	2	5
Collège Algonquin - Nepean	0	0	4	4
Collège Canadore - North Bay	0	0	1	1
Collège Fanshawe - London	0	0	2	2
Collège George Brown - Toronto	0	0	2	2
Collège Humber - Etobicoke	0	1	2	3
Collège Mohawk - Hamilton	0	0	1	1
Collège Northern - South Porcupine	0	1	0	1
Collège Seneca - North York	0	1	1	2
Collège Sheridan - Oakville	0	12	0	12
Collège Sir Sanford Fleming - Peterborough	0	1	0	1
Collège St. Clair - Windsor	0	1	0	1
Total	1	19	15	35
Condition féminine	0	2	0	2
Total	0	2	0	2
Consommation et Commerce	11	13	14	38
Régie des alcools de l'Ontario	2	1	2	5
Total	13	14	16	43
Culture et Communication	1	7	5	13
Archives publiques de l'Ontario	0	8	0	8
Fondation du patrimoine ontarien	6	1	1	8
Total	7	16	6	29



du pourcentage des ordonnances où la décision de la personne responsable a été entérinée (79,7 pour 100 en 1988, 45,2 pour 100 en 1989 et 24,3 pour 100 en 1990). En revanche, le pourcentage d'ordonnances où la décision de la personne responsable a été entérinée en partie a augmenté (6,3 pour 100 en 1988, 23,5 pour 100 en 1989 et 44,6 pour 100 en 1990). Le pourcentage d'ordonnances où la décision de la personne responsable n'a pas été entérinée a augmenté en 1989, mais est tombé quelque peu en 1990 (13,9 pour 100 en 1988, 31,3 pour 100 en 1989 et 21,6 pour 100 en 1990).

Figure 2 / Décision résolue par ordonnance



Ces chiffres révèlent qu'il y a un mouvement de recul dans le nombre d'ordonnances où le bureau du commissaire a entériné ou n'a pas entériné la décision de la personne responsable. Cette situation traduit le fait que le bureau du commissaire connaît un plus grand succès dans la

### Catégories d'appelants

médiation des appels où la décision de la personne responsable est soit clairement approuvée, soit clairement inapprouvée, ou le fait que le bureau du commissaire reçoit un nombre moins élevé d'appels de cette nature en raison d'une plus grande compréhension de la loi de la part des institutions et du grand public.

En 1990, le bureau du commissaire a rendu en tout 72 ordonnances, contre 102 ordonnances en 1989 et 36 en 1988. Le nombre d'appels résolus par une ordonnance dépasse le nombre d'ordonnances rendues chaque année, parce que dans certains cas, une ordonnance règle plus d'un appel.

Quoique la loi n'exige pas des appelants qu'ils donnent des renseignements sur eux-mêmes lorsqu'ils interjettent appel, le personnel du bureau du commissaire s'efforce de déterminer les diverses catégories d'appelants. Comme cette détermination est subjective, il faut user de prudence dans l'interprétation de ces chiffres.

Sur les 648 appels reçus en 1990, 466 (71,9 pour 100) ont été interjetés par des particuliers (Tableau 25). Un pourcentage moins élevé d'appels ont été reçus de représentants d'entreprises (9,7 pour 100), de mandataires (3,1 pour 100). Dix-neuf autres appelants (2,9 pour 100) ne tombent dans ni l'une ni l'autre des catégories susmentionnées.

Ces pourcentages sont demeurés relativement constants au cours des trois dernières années, quoique le pourcentage d'appelants qui sont des particuliers était légèrement plus élevé en 1990 qu'au cours des deux années précédentes (71,9 pour 100), par rapport à 64,6 pour 100 en 1988 et à 61,1 pour 100 en 1989. En outre, par rapport à l'année précédente, il y a eu un nombre moins élevé d'appelants qui étaient des mandataires (3,1 pour 100, contre 10,4 pour 100 en 1989).

Le pourcentage des appels résolus en 1990 au moyen d'une ordonnance est tombé à 15,8 pour 100, contre 31,8 pour 100 en 1989 et 39,9 pour 100 en 1988 (Tableau 24). Quoique le nombre de cas résolus par un règlement ait diminué au cours de 1990 par rapport aux années précédentes (48 pour 100 en 1988, 59,1 pour 100 en 1989 et 40,4 pour 100 1990), le nombre d'appels résolus a augmenté substantiellement (8,1 pour 100 en 1988, 7,5 pour 100 en 1989 et 42,1 pour 100 en 1990) (Tableaux 23 et 24). L'augmentation du nombre d'appels résolus par d'autres moyens qu'une ordonnance révèle que le bureau du commissaire réussit à résoudre un plus grand nombre d'appels au stade de la médiation.

#### Règlement sans ordonnance

En 1990, 87 appels ont été réglés parce que l'appelant a reçu un complètement d'information de l'institution (Tableau 19). Une autre tranche de 90 appels ont été réglés parce que l'appelant a reçu de plus amples précisions au sujet de la loi qui l'ont satisfait.

#### Règlement par ordonnance

Sur les 74 appels qui ont été résolus par une ordonnance, le bureau du commissaire a entériné la décision de la personne responsable de l'institution dans le cas de 18 appels (24,3 pour 100), a entériné en partie la décision de la personne responsable dans le cas de 33 appels (44,6 pour 100) et n'a pas entériné la décision de la personne responsable dans le cas de 16 appels (21,6 pour 100) (Tableau 19). Sept autres appels (9,5 pour 100) qui ont fait l'objet d'une ordonnance ne tombent dans ni l'une ni l'autre de ces catégories.

Lorsqu'on compare le pourcentage des ordonnances qui sont tombées dans l'une des trois catégories ci-dessus au cours des trois dernières années (Tableau 24), on constate une diminution

visaient le ministère des Services gouvernementaux (174). Quatre-vingt-dix pour cent, soit 157 appels, provenaient d'un seul appelant. Vient ensuite le ministère de la Santé avec 64 appels, suivi par les ministères du Revenu (56), des Services correctionnels (55), du Solliciteur général (48) et des Services sociaux et communautaires (47). Du côté des organismes, ceux qui ont reçu le plus grand nombre d'appels sont la Commission des droits de la personne (10), la Commission des accidents du travail (10) et la Stadium Corporation (neuf).

Les ministères de la Santé et des Services gouvernementaux ont été vus par le plus grand nombre d'appels en 1989 (42 et 38 respectivement). En 1988, le ministère des Services correctionnels (59) et de la Santé (45) ont été vus par le plus grand nombre d'appels. Les ministères des Services sociaux et communautaires, des Services gouvernementaux, du Revenu, du Solliciteur général et du Trésor et de l'Économie ont tous été vus par un plus grand nombre d'appels en 1990 qu'au cours des années précédentes.

#### Règlement des appels

Le bureau du commissaire a pour objectif de régler le plus grand nombre d'appels par voie de médiation. À mesure qu'augmente le nombre d'ordonnances couvrant une gamme plus large de questions, il devrait être possible de citer les interprétations de la loi contenues dans les ordonnances pour régler un plus grand nombre d'appels par la médiation.

En 1990, parmi les 468 appels résolus au cours de l'année, 74 (15,8 pour 100) ont été réglés par une ordonnance (Tableau 19). Regroupement des appels, toutes catégories confondues : parmi les 394 autres appels résolus, 189 (40,4 pour 100) ont été réglés, 197 (42,1 pour 100) ont été retirés, six (1,3 pour 100) ont été abandonnés et deux (0,4 pour 100) ont été considérés comme ne relevant pas de la compétence du bureau du commissaire.

## Statistiques relatives au processus d'appel

En 1990, 648 appels ont été interjetés devant le commissaire en vertu de la loi (Tableau 20), à savoir, 512 (79 pour 100) relativement à des demandes de documents généraux, 127 (19,6 pour 100) relativement à des demandes de renseignements personnels et les 9 autres, (1,4 pour 100), relativement à des demandes de rectification. Ce total représente une moyenne mensuelle de 54 nouveaux appels. Au cours de 1990, 468 appels ont été résolus, soit une moyenne de 39 appels chaque mois.

Le total de 648 appels en 1990 représente une augmentation par rapport aux 350 appels reçus en 1988 et aux 393 appels reçus en 1989 (Tableau 20). De même, 468 appels ont été résolus en 1990 comparativement à 198 en 1988 et à 362 en 1989.

Il y a eu une forte augmentation du nombre des appels interjetés et résolus au cours de chacune des trois années depuis l'entrée en vigueur de la loi. L'augmentation en 1990 résulte en partie du fait qu'un particulier a déposé 240 appels, soit 37 pour 100 de tous les appels interjetés devant le commissaire au cours de l'année.

## Types d'appels

Certains des 648 appels visaient plusieurs décisions rendues par une institution quelconque. Au total, 660 décisions ont donné lieu à un appel (Tableau 18). Sur ce nombre, 413 (62,6 pour 100) portaient sur la décision définitive de l'institution, soit que celle-ci ait refusé l'accès au document en totalité ou en partie, soit qu'elle ait refusé d'apporter une rectification au document, soit qu'elle ait refusé de confirmer ou de nier l'existence d'un document, ou qu'elle ait soutenu que le document n'existait pas. La plupart des appels étaient une réaction à la décision définitive de la personne responsable de refuser l'accès à la totalité du document (33 pour 100) ou à une partie du document (21,4 pour 100).

## Institutions particulières

La majorité des appels reçus en 1990 visaient des ministères (594, soit 91,7 pour 100), par opposition aux organismes (54, soit 8,3 pour 100) (Tableau 17). Les appels les plus nombreux concernaient des appels relatifs à la loi sur l'accès à l'information. Le pourcentage des appels concernant les estimations et la perception de frais était moins élevé en 1989 et 1990 qu'en 1988 (11,6 pour 100 en 1988, contre 4,6 pour 100 en 1989 et 5,6 pour 100 en 1990). En outre, le pourcentage d'appels où l'institution a soutenu qu'il n'existait pas de documents a diminué au cours des trois premières années d'application de la loi (20,1 pour 100 en 1988, 11 pour 100 en 1989 et 6,8 pour 100 en 1990). Cette évolution dans le type de décisions faisant l'objet d'appels peut s'expliquer par le fait que les ordonnances rendues par le commissaire permettent d'éclaircir certains points soulevés en vertu de la loi.

Le pourcentage des appels concernant les estimations et la perception de frais était moins élevé en 1988, 31,2 pour 100 en 1989 et 33 pour 100 en 1990). La loi il y a trois ans (Tableau 21). Cependant, le pourcentage des appels ayant trait à une décision de refuser l'accès à une partie d'un document a diminué au cours de 1990 (21,4 pour 100 contre 29,3 pour 100 en 1988 et 30,5 pour 100 en 1989). En revanche, les appels ayant trait à une décision de refuser l'accès à la totalité des renseignements ont accusé une augmentation proportionnelle correspondante depuis la première année d'application de la loi (23 pour 100 en 1988, 31,2 pour 100 en 1989 et 33 pour 100 en 1990).

Le pourcentage de chaque type d'appel demeure à peu près le même depuis l'entrée en vigueur de la loi il y a trois ans (Tableau 21). Cependant, le pourcentage des appels ayant trait à une décision de refuser l'accès à une partie d'un document a diminué au cours de 1990 (21,4 pour 100 contre 29,3 pour 100 en 1988 et 30,5 pour 100 en 1989). En revanche, les appels ayant trait à une décision de refuser l'accès à la totalité des renseignements ont accusé une augmentation proportionnelle correspondante depuis la première année d'application de la loi (23 pour 100 en 1988, 31,2 pour 100 en 1989 et 33 pour 100 en 1990). Quant aux autres appels, 99 (15 pour 100) ont trait à une décision préliminaire par l'institution avant de rendre une décision définitive concernant la divulgation des renseignements. Les décisions préliminaires portent sur l'estimation et la perception des frais, les délais de prorogation et la divulgation éventuelle de renseignements sur des tiers. Les autres 148 appels (22,4 pour 100) ne tombent dans ni l'une ni l'autre des catégories susmentionnées.

La majorité des appels reçus en 1990 visaient des ministères (594, soit 91,7 pour 100), par opposition aux organismes (54, soit 8,3 pour 100) (Tableau 17). Les appels les plus nombreux

TABLEAU 16 / GENRES D'AUTEURS DE DEMANDE\*

	1988			1989			1990			TOTAL
	Documents	Renseignements	Général	Documents	Renseignements	Général	Documents	Renseignements	Général	
Particulier	975	1478	1320	2541	1372	2152	9838	53.3		
Entreprise	258	88	543	10	863	74	1836	9.9		
Rechercheur	212	3	157	1	143	0	516	2.8		
Média	192	2	182	2	163	0	541	2.9		
Association	101	12	162	0	164	11	450	2.4		
Autre	306	633	154	0	86	16	1195	6.5		
Inconnu	N/A	N/A	3031	142	744	181	4098	22.2		
Total	2044	2216	5549	2696	3535	2434	18474	100.0		

\*Ce tableau comprend toutes les demandes exécutées. (Les demandes de rectification sont incluses à titre de demandes de renseignements personnels.)



TABLEAU 15 / MOTIFS DE LA PERCEPTION DE FRAIS\*

	1988			1989			1990			TOTAL
	Documents	Renseignements	Généraux	Documents	Renseignements	Généraux	Documents	Renseignements	Généraux	%
Reproduction	124	2	644	20	927	66	1783	40.5		
Expédition	54	1	394	11	621	18	1099	25.0		
Préparation	54	0	412	3	624	0	1093	24.8		
Temps de recherche	48	0	62	1	82	2	195	4.4		
Frais d'ordinateur	27	0	69	0	82	18	196	4.5		
Autres	13	0	4	0	8	12	37	0.8		
Total	320	3	1585	35	2344	116	4403	100.0		

\*Chaque cas dans lequel des frais sont envisagés peut donner lieu à la perception de frais pour plusieurs motifs.



TABLEAU 13 / ABOUTISSEMENT DES DEMANDES DE RECTIFICATION

	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	TOTAL Nbre %
Rectification(s) acceptée(s)	4	7	7						18	11.8	
Rectification(s) refusée(s)	8	85	39						132	86.3	
Rectification(s) retirée(s)/ abandonnée(s)	1	1	1						3	2.0	
Total	13	93	47						153	100.1	

TABLEAU 14 / CAS COMPORTANT UNE ESTIMATION DE FRAIS

1988		1989		1990		TOTAL	
Documents Généraux	Renseignements Personnels	Documents Généraux	Renseignements Personnels	Documents Généraux	Renseignements Personnels	Nbre	%
124	2	540	19	796	14	1495	49.1
295	27	428	179	497	96	1522	50.0
7	0	8	0	12	0	27	0.9
426	29	976	198	1305	110	3044	100.0
Total							

TABLEAU II / DÉLAIS D'EXÉCUTION DES DEMANDES\*

		1988		1989		1990		TOTAL	
		Documents Généraux		Documents Généraux		Documents Généraux			
		Renseignements Personnels		Renseignements Personnels		Renseignements Personnels			
		Nbre		Nbre		Nbre		%	
1 à 30 jours	1513	1884	4522	2421	2309	1902	14551	78.8	
31 à 60 jours	313	233	601	203	734	421	2505	13.6	
61 à 90 jours	123	33	171	50	272	81	730	4.0	
91 à 120 jours	95	53	132	12	63	20	375	2.0	
121 jours ou plus	S.O.	S.O.	123	10	157	10	300	1.6	
Total	2044	2203	5549	2696	3535	2434	18461	100.0	

\*Ce tableau ne tient pas compte des demandes de rectification. (La donnée relative au délai d'exécution n'a pas été recueillie pour les demandes de rectification.)

TABLEAU 12 / RÉGLEMENT DES DEMANDES\*

1988		1989		1990		TOTAL	
Documents Généraux	Renseignements Personnels	Documents Généraux	Renseignements Personnels	Documents Généraux	Renseignements Personnels	Nbre	%
855	1512	3962	1872	1622	1344	11167	60.7
444	477	639	644	666	843	3713	20.2
519	145	595	125	645	157	2186	11.9
224	65	347	48	425	84	1193	6.5
2	4	6	7	127	6	152	0.8
2044	2203	5549	2696	3535	2434	18411	100.1
Divulgation intégrale							
Divulgation partielle							
Aucune divulgation							
Retrait/Abandon							
Refus de confirmer/nier							
Total							

\*Le règlement des demandes de rectification est indiqué séparément (Tableau 13).

\*Comme les demandes peuvent être reportées d'une année à l'autre, le nombre de demandes exécutées au cours d'une année peut dépasser le nombre de demandes effectivement reçues.

	1988				1989				1990				TOTAL
	Demandes reçues exécutées				Demandes reçues exécutées				Demandes Reportées de l'année précédente reçues exécutées				Demandes reçues exécutées
Trésor et Economie	46	45	48	32	45	17	45	122	46	139	45	122	122
Société	0	0	41	40	24	1	30	70	0	65	30	70	70
Montagne du stade limité	46	45	89	72	69	18	75	192	204	204	75	192	192
Total	129	115	128	120	173	25	164	399	430	430	164	399	399

Comm. du régime de retraite	des employés municipaux de l'Ontario	Comm. de réglement des grèfs de la santé et la sécurité au travail	Comm. des relations de travail de l'Ontario	Conseil consultatif sur la santé et la sécurité au travail	Tribunal d'appel des accidents du travail	Tribunal de l'équité salariale	Tribunal des relations de travail de la fonction publique de l'Ontario	Total	Transports	Comm. des transports rouliers de l'Ontario	Réseau Co
1988	1989	1990	TOTAL	Demandes exécutées	Demandes exécutées	Demandes exécutées	Demandes exécutées	Demandes exécutées	Demandes exécutées	Demandes exécutées	Demandes exécutées
0	0	0	1	2	2	2	7	397	122	2	5
0	0	0	0	1	0	0	4	339	110	0	5
0	0	3	0	2	4	0	8	1488	124	1	3
0	0	2	7	0	0	0	7	1450	117	1	2
1	1	4	13	0	0	0	0	809	171	0	2
0	0	1	0	0	0	0	0	35	25	0	0
1	1	5	16	0	0	0	4	795	163	0	1
1	1	9	28	9	9	2	5	2694	417	3	10
1	1	9	27	9	9	3	5	2584	390	1	8

1988	1989	1990	TOTAL	Demandes			
				exécutées	Reportées de l'année précédente	exécutées	exécutées
Tourisme et Loisirs	17	19	18	0	0	16	59
Comm. des parcs du Niagara	0	2	2	0	0	0	2
Comm. des parcs du Saint-Laurent	1	3	0	0	0	0	4
Palais des congrès du Toronto	0	0	1	0	0	2	2
Société d'exploitation de la Place d'Ontario	2	30	24	0	9	12	41
Société des loteries de l'Ontario	3	5	4	0	4	4	12
Total	23	64	53	0	32	34	119
Travail	122	214	184	25	392	381	728
Comité des normes en matières de maladies professionnelles	1	1	0	0	0	0	1
Comm. des accidents du travail	264	1256	1251	3	377	371	1897
Comm. de l'équité salariale	0	2	1	2	3	2	5
Commission d'évaluation des classifications	0	1	1	1	3	3	4
Comm. de gréfs de la fonction publique	0	2	2	2	9	8	11



1988	1989	1990	TOTAL										
				Demandes exécutées	Demandes exécutées	Reportées de l'année précédente	Demandes exécutées	Demandes exécutées	Demandes exécutées	Demandes exécutées	Demandes exécutées	Demandes exécutées	Demandes exécutées
Com. d'étude des services à l'enfance et à la famille	0	0	0	1	1	0	0	0	0	0	0	1	1
Comm. de rév. des placements sous garde	0	2	2	0	2	0	0	0	0	0	0	2	2
Commission de révision de l'aide sociale	9	14	14	8	14	6	0	6	0	6	0	29	28
Conseil médical consultatif	1	0	0	1	0	0	0	0	0	0	0	1	1
Total	372	535	504	351	504	460	25	447	447	447	447	1367	1302
Solliciteur général	120	176	149	112	176	274	44	225	225	225	225	570	486
Comité consultatif sur la pre- vention du crime	2	0	0	2	0	0	0	0	0	0	0	2	2
Commission d'arbitrage de la police de l'Ontario	2	0	2	2	0	0	0	0	0	0	0	2	4
Comm. du code des incendies	2	0	0	2	0	0	0	0	0	0	0	2	2
Comm. d'étude des soins aux animaux	2	0	0	2	0	0	0	0	0	0	0	2	2
Comm. de police de l'Ontario	7	11	11	7	11	2	0	2	2	2	2	20	20
Conseil des coroners	2	0	0	2	0	0	0	0	0	0	0	2	2
Total	137	187	162	129	187	276	44	227	227	227	227	600	518

	Conseil régional de santé de Toronto	TOTAL	1988			1989			1990			TOTAL		
			Demandes reçues exécutées			Demandes reçues exécutées			Demandes Reportées de l'année précédente			Demandes reçues exécutées		
Services gouvernementaux	Total	370	0	0	1	1	1	0	0	0	0	1	1	1
	Comité consultatif du ministre sur les services correctionnels	20	19	16	15	0	0	0	0	0	0	36	34	34
Services gouvernementaux	Total	50	47	54	47	54	7	32	158	126	50	47	54	47
	Secrétariat des ressources humaines	20	19	16	15	0	0	0	36	34	20	19	16	15
Services gouvernementaux	Total	800	654	861	765	1015	46	959	2676	2378	800	654	861	765
	Comm. de rév. des placements	21	20	25	24	27	0	28	73	72	21	20	25	24
Services gouvernementaux	Total	104	103	164	156	414	149	258	682	517	104	103	164	156
	Services sociaux et communautaires	362	342	518	487	454	25	441	1334	1270	362	342	518	487

[illegible]

	1988	1989	1990	TOTAL					
Demandes Demandes reçues exécutées					Commission de révision des loyers	Conseil des normes de loc. résidentielle	Société de logement de l'Ontario	Total	
	0	4	12	7	5	26	15	194	360
Demandes Demandes reçues exécutées	0	4	12	7	16	50	16	391	
Demandes Demandes reçues exécutées	0	18	28	3	48				
Demandes Demandes reçues exécutées	4	18	28	3	48				
Demandes Demandes reçues exécutées	0	1	15	1	16				
Demandes Demandes reçues exécutées	65	125	201	21	391				
Demandes Demandes reçues exécutées	52	114	201	21	391				
Demandes Demandes reçues exécutées	4	1	0	0	5				
Demandes Demandes reçues exécutées	4	1	0	0	5				
Demandes Demandes reçues exécutées	3	0	0	1	4				
Demandes Demandes reçues exécutées	3	0	0	1	4				
Personnes handicapées	3	0	1	0	4				
Personnes handicapées	3	0	1	0	4				
Total	4	1	0	0	5				
Total	4	1	0	0	5				
Personnes âgées	4	1	0	0	5				
Personnes âgées	4	1	0	0	5				
Procureur général	139	207	136	31	441				
Bureau du Commissaire aux plaintes du public	1	1	1	0	3				
Comité consultatif du Curateur public sur les placements	5	13	13	2	31				
Comité des règles d'exercice des compétences légales	0	0	0	1	1				
Comm. des affaires municipales de l'Ontario	2	1	0	0	3				





1988	1989	1990	TOTAL
Demandes Demandes reçues exécutées	Demandes Demandes reçues exécutées	Reportées de l'année précédente Demandes reçues exécutées	Demandes Demandes reçues exécutées

Energie	6	5	12	9	5	2	4	23	18
Ontario Hydro	323	285	121	93	194	5	214	638	592
Total	329	290	133	102	199	7	218	661	610

Environnement	96	81	174	152	185	16	188	455	421
Comité consultatif sur les évaluations environnementales	0	0	2	2	2	0	2	4	4
Comité consultatif sur les pesticides	8	8	0	0	1	0	1	9	9
Comm. d'appel de l'environne- ment	0	0	0	0	1	0	1	1	1
Commission de l'énergie de l'Ontario	0	0	0	0	1	0	1	1	1
Comm. des évaluations environnement- mentales	0	0	0	0	1	0	1	1	1
Société ontarienne de gestion des déchets	9	9	4	4	0	0	0	13	13
Total	113	98	180	158	191	16	194	484	450

Formation professionnelle	24	24	16	11	11	2	17	51	52
Total	24	24	16	11	11	2	17	51	52

Industrie, Commerce et Technologie	79	76	35	34	50	1	53	164	163
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	1988				1989				1990				TOTAL
	Demandes reçues	Demandes exécutées	Demandes reçues	Demandes exécutées	Demandes reçues	Demandes exécutées	Demandes reçues	Demandes exécutées	Demandes reçues	Demandes exécutées	Demandes reçues	Demandes exécutées	
Collège Lambton	0	0	3	3	1	0	1	0	1	4	4	4	4
- Sarnia													
Collège Loyalist	0	0	0	0	2	0	2	0	2	2	2	2	2
- Belleville													
Collège Mohawk	0	0	3	2	3	0	3	0	3	6	6	5	5
- Hamilton													
Collège Niagara	0	0	4	4	5	0	5	0	5	9	9	9	9
- Welland													
Collège Northern	0	0	14	14	4	0	4	0	5	18	18	19	19
- South Porcupine													
Collège Sault	0	0	2	2	3	0	4	0	4	5	5	6	6
- Sault Ste Marie													
Collège Seneca	0	0	7	5	4	0	7	0	7	11	11	12	12
- North York													
Collège Sheridan	0	0	32	32	8	0	9	0	9	40	40	41	41
- Oakville													
Collège Sir	0	0	27	27	0	0	0	0	0	27	27	27	27
Sanford Fleming													
- Peterborough													
Collège St. Clair	0	0	3	3	2	0	2	0	2	5	5	5	5
- Windsor													
Collège	0	0	0	0	3	0	3	0	3	399	399	384	384
St. Lawrence													
- Brockville													
Total	37	33	197	186	165	6	165	0	0	3	3	3	3

Comité  
consultatif  
du premier  
ministre sur les  
ressources en  
personnel-  
cadre

Comité de sel.	Fonds d'encouragement à la recherche dans les universités	1988		1989		1990		TOTAL	
		Demandes exécutées	regues	Demandes exécutées	regues	Demandes exécutées	Reportés de l'année précédente	Demandes exécutées	regues
Collège Algonquin	0	0	2	2	6	0	8	8	10
Collège - Nepcan	0	0	2	2	2	0	4	4	5
Collège Cambrian	0	0	2	1	2	0	4	4	5
Collège - Sudbury	0	0	2	1	1	0	2	7	8
Collège Canadore	0	0	6	6	1	0	2	6	8
Collège -North Bay	0	0	2	2	4	0	5	6	7
Collège Centennial	0	0	2	2	4	0	5	4	7
Collège - Scarborough	0	0	2	3	1	0	1	4	4
Collège Confederation	0	0	3	4	2	0	2	6	6
Collège - Thunder Bay	0	0	4	4	2	0	2	6	6
Collège Conestoga	0	0	3	3	5	0	6	8	9
Collège Durham	0	0	3	3	35	0	35	57	57
Collège Fanshawe	0	0	22	22	0	0	35	57	57
Collège - London	0	0	2	2	5	0	5	7	7
Collège George Brown	0	0	2	3	3	0	4	6	7
Collège - Toronto	0	0	3	3	3	0	3	3	3
Collège Georgian	0	0	3	0	3	0	4	6	7
Collège - Barrie	0	0	0	0	2	0	3	3	3
Collège Humber	0	0	0	0	3	0	3	3	3
- Elobicoke	0	0	0	0	3	0	3	3	3



1988	1989	1990	TOTAL										
				Demandes exécutées	Demandes exécutées	Demandes exécutées	Demandes exécutées	Reportées de l'année précédente	Demandes exécutées	Demandes exécutées	Demandes exécutées	Demandes exécutées	Demandes exécutées
Comm. des services en français de l'Ontario	0	0	2	0	0	0	0	0	0	0	0	2	2
Total	8	7	6	6	1	0	2		15	15	15	15	15
Affaires gouvernementales	5	4	1	1	4	1	6		11	10	11	11	11
Total	5	4	1	1	4	1	6		11	10	11	11	11
Affaires municipales	21	18	38	29	25	6	16		63	84	63	63	63
Total	21	18	38	29	25	6	16		63	84	63	63	63
Agriculture et Alimentation	57	54	36	32	55	3	55		141	148	141	141	141
Total	57	54	36	32	55	3	55		141	148	141	141	141
Bureau du premier ministre et conseil des ministres	15	14	15	13	29	0	26		53	59	53	53	53
Total	15	14	15	13	29	0	26		53	59	53	53	53
Collèges et Universités	26	22	36	30	45	4	41		93	107	93	93	93
Conseil ontarien du Regents des Collèges d'arts appliqués et de technologie	1	1	1	1	0	0	0		2	2	2	2	2
Comité de sélection du Régime d'études supérieures de l'Ontario	9	9	14	13	18	0	8		30	41	30	30	30

TABLEAU 10 / DEMANDES REÇUES ET EXÉCUTÉES\*

1988	1989	1990	TOTAL		Affaires autochtones	Direction générale des affaires autochtones de l'Ontario	Total	Affaires civiles	Comm. Ont. de droits de la personne	Conseil consultatif des relations multiculturelles de l'Ontario	Conseil ontarien des affaires universitaires	Musée royal de l'Ontario	Total	Affaires Francophones
			Demandes reçues exécutées	Demandes Reportées de l'année précédente										
0	0	0	2	1	0	1	0	7	22	0	0	0	29	8
0	0	0	2	0	1	0	0	6	20	0	0	0	26	7
1	1	1	1	0	0	0	1	13	47	0	0	0	60	4
1	1	1	1	0	1	1	2	8	31	0	2	0	39	4
0	0	0	0	0	0	0	2	4	46	2	2	2	56	1
1	1	1	1	0	1	1	0	3	0	0	0	0	3	0
1	1	1	1	0	1	1	2	4	43	2	2	2	53	2
2	2	2	2	1	1	1	3	24	115	2	2	2	145	13
2	3	3	3	1	1	1	3	18	94	2	2	2	118	13

TABLEAU 9 / GENRES DE DEMANDES D'ACCÈS\*

	1988	1989	1990	TOTAL
DEMANDES DEMANDES REÇUES EXÉCUTÉES	2432	5592	3798	11128
Documents généraux	2432	5592	3798	11128
DEMANDES DEMANDES REÇUES EXÉCUTÉES	2338	2549	2493	7333
Renseignements personnels	2338	2549	2493	7333
DEMANDES DEMANDES REÇUES EXÉCUTÉES	14	92	54	153
Rectifications	14	92	54	153
DEMANDES DEMANDES REÇUES EXÉCUTÉES	4784	8233	6345	18614
Total	4784	8233	6345	18614

\*Comme les demandes peuvent être reportées d'une année à l'autre, le nombre de demandes exécutées au cours d'une année peut dépasser le nombre de demandes effectivement reçues.

TABLEAU 7 / MOTIFS DE LA PERCEPTION DE FRAIS\*

	DOCUMENTS GÉNÉRAUX	RENSEIGNEMENTS PERSONNELS	TOTAL DES DEMANDES
	Nbre	Nbre	Nbre
	%	%	%
Reproduction	927	56,9	993
Expédition	621	18	639
Préparation	624	0	624
Temps de recherche	82	2	84
Frais d'ordinateur	82	18	100
Autres	8	12	20
Total	2344	116	2460
	99,9	99,9	100,1

\*Chaque cas dans lequel des frais sont envisagés peut donner lieu à la perception de frais pour plusieurs motifs.

TABLEAU 8 / GENRES D'AUTEURS DE DEMANDE\*

	DOCUMENTS GÉNÉRAUX	RENSEIGNEMENTS PERSONNELS	TOTAL DES DEMANDES
	Nbre	Nbre	Nbre
	%	%	%
Particulier	1372	2152	3524
Entreprise	863	74	937
Rechercheur	143	0	143
Média	163	0	163
Association	164	11	175
Autres	86	16	102
Inconnu	744	181	925
Total	3535	2434	5969
	99,8	100,0	99,9

\*Ce tableau comprend toutes les demandes exécutées.

TABLEAU 5 / DISPOSITIONS DES DEMANDES DE RECTIFICATION

	Nbre	%
Rectification acceptée en totalité	7	14.9
Rectification acceptée en partie	0	0.0
Rectification refusée	39	83.0
Rectification retirée/abandonnée	1	2.1
Total	47	100.0

Nbre de déclarations de désaccord annexées au document: 4

Notification de déclaration de désaccord demandée: 0

Nbre de notifications envoyées: 7

TABLEAU 6 / CAS COMPORTANT UNE ESTIMATION DE FRAIS

	DOCUMENTS GÉNÉRAUX	RENSEIGNEMENTS PERSONNELS	TOTAL DES DEMANDES
	Nbre	Nbre	Nbre
	%	%	%
Perception intégrale	796	14	810
Suppression intégrale	497	96	593
Suppression partielle	12	0	12
Total	1305	110	1415
	100.0	100.0	100.0

Total des frais perçus	\$72,688.74	\$513.10	\$73,201.84
Moyenne des frais perçus par demande avec perception de frais	\$89.96	\$36.65	\$89.05
Total des frais supprimés	\$6,481.63	\$1,254.13	\$7,735.76
Moyenne des frais supprimés par demande avec suppression (intégrale ou partielle) des frais.	\$12.73	\$13.06	\$12.79

TABLEAU 4 / EXCEPTIONS INVOQUÉES

	DOCUMENTS GÉNÉRAUX	RENSEIGNEMENTS PERSONNELS	TOTAL
	Nbre	Nbre	Nbre
	%	%	%
Article 12 - Documents du Conseil des ministres	44	3	47
Article 13 - Conseils au gouvernement	110	144	254
Article 14 - Exécution de la loi	445	257	702
Article 15 - Rapports avec d'autres autorités gouvernementales	14	4	18
Article 16 - Défense	2	0	2
Article 17 - Renseignements de tiers	199	23	222
Article 18 - Intérêts économiques et autres	98	28	126
Article 19 - Secret professionnel de l'avocat	74	48	122
Article 20 - Menace à la santé ou à la sécurité	16	5	21
Article 21 - Vie privée (documents généraux)	414	S.O.	414
Article 22 - Critères : atteinte injustifiée à la vie privée	52	20	72
Article 49 - Vie privée (renseignements personnels)	S.O.	805	805
Article 67 - Autres lois	149	12	161
Total	1617	1349	2966
Nombre moyen d'exceptions par demande comportant une dérogation de la demande.	1.2	1.3	1.3



TABLEAU 3 / RÉGLEMENT DES DEMANDES\*

DOCUMENTS GÉNÉRAUX	RENSEIGNEMENTS PERSONNELS	TOTAL DES DEMANDES
Nbre %	Nbre %	Nbre %
Divuligation intégrale	1344	2966
Divuligation partielle	843	1509
Aucune divulgation	157	852
Retrait/abandon	84	509
Refus de confirmer/nier	6	133
Total	2434	5969
100.0	100.0	100.0
45.9	55.2	49.7
18.8	34.6	25.3
19.7	6.5	14.3
12.0	3.5	8.5
3.6	0.2	2.2
127		
3535		

\*Le règlement des demandes de rectification est indiqué séparément (Tableau 5).

TABLEAU 1 / GENRES DE DEMANDES D'ACCÈS

	DEMANDES REÇUES	DEMANDES EXÉCUTÉES	REPORTÉES À 1991
	Nbre	Nbre	Nbre
	%	%	%
Documents généraux	3798	3535	551
Renseignements personnels	2493	2434	134
Rectifications	54	47	6
Total	6345	6016	691
	100.0	100.1	100.0

TABLEAU 2 / DÉLAIS D'EXÉCUTION DES DEMANDES\*

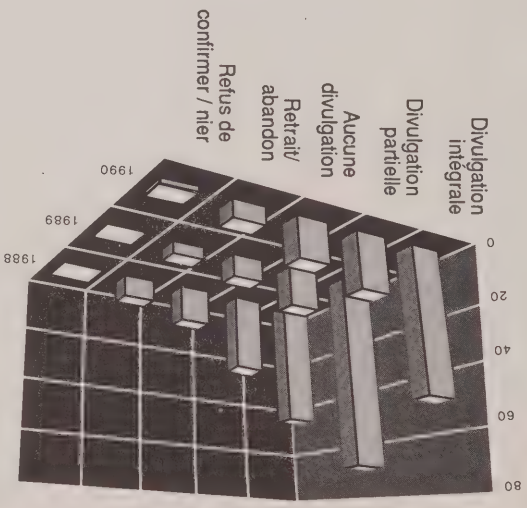
	DOCUMENTS GÉNÉRAUX	RENSEIGNEMENTS PERSONNELS	TOTAL DES DEMANDES
	Nbre	Nbre	Nbre
	%	%	%
1 à 30 jours	2309	1902	4211
31 à 60 jours	734	421	1155
61 à 90 jours	272	81	353
91 à 120 jours	63	20	83
121 jours ou plus	157	10	167
Total	3535	2434	5969
	100.0	99.9	99.9

\*Ce tableau ne tient pas compte des demandes de rectification. (La donnée relative au délai d'exécution n'a pas été recueillie pour les demandes de rectification.)

Dans presque 15,5 pour 100 des demandes, les coordonnateurs n'ont pas été en mesure de fournir ce renseignement. La majeure partie de ce pourcentage peut s'expliquer par le fait que 884 demandes soumises au ministère du Revenu n'ont pas été placées dans une catégorie selon la source. Lorsqu'on ne tient pas compte de ces demandes dans le calcul, le chiffre précédent est réduit à 1 pour 100.

Lorsque ce renseignement est fourni, il s'agit en grande partie de particuliers qui sont les auteurs des demandes. La quasi-totalité des demandes de renseignements personnels (88,4 pour 100) ont été présentées par des particuliers, et 38,8 pour 100 des demandes de documents généraux ont également été présentées par des particuliers.

Figure 1 / Règlement des demandes



### Demands de rectification

On constate une nette diminution du nombre de demandes de rectification qui sont tombées de 93 en 1989 à 47 en 1990. Ces 47 demandes sont toujours de beaucoup supérieures aux 13 demandes reçues en 1988 (Tableau 13). La plupart de ces demandes en 1990 (39 sur 47) ont été refusées (Tableau 5), ce qui a donné lieu à l'insertion de 4 déclarations de désaccord annexées aux documents et à 7 avis de déclaration de désaccord envoyés aux personnes qui avaient eu accès aux documents en cause.

### Estimation des frais

Dans le cadre de leur rapport au commissaire, les ministères et organismes fournissent aussi des renseignements sur la perception et la suppression des frais au cours de l'étude des demandes. En 1990, il y a eu perception de frais relativement à 796 demandes de documents généraux et à 14 demandes de renseignements

### Motifs de la perception des frais

Le motif le plus fréquent pour justifier la perception de frais est la nécessité de couvrir les frais de reproduction (40,4 pour 100 de tous les motifs). Puis viennent des frais d'expédition (26 pour 100) et de préparation des documents (25,4 pour 100) qui sont les motifs les plus souvent invoqués par les institutions (Tableau 7).

### Catégories d'auteurs de demande

Les coordonnateurs à l'information et à la protection de la vie privée qui présentent ce rapport de fin d'exercice au commissaire sont également priés de préciser à quelle catégorie appartiennent l'auteur de chaque demande (Tableau 8). Ils s'agit là d'un jugement subjectif de la part du coordonnateur, mais il peut être utile dans l'élaboration d'un programme d'information et de sensibilisation.

En ce qui concerne les demandes d'accès aux documents généraux, la perception totale de frais s'est élevée à 72 688,74 \$ en 1990, contre 513,10 \$ dans le cas des demandes de renseignements personnels (Tableau 6). Pour toutes les demandes qui ont donné lieu à la perception de frais, la moyenne des frais perçus a été de 89,96 \$ pour les demandes de documents généraux et de 36,65 \$ pour les demandes de renseignements personnels.

Les deux genres de demandes, des frais de l'ordre de 7 735,76 \$ ont été supprimés.

Les organismes ont établi des estimations de frais pour 1 415 demandes. Sur ce nombre, 593 ont bénéficié d'une suppression totale des frais et 12 d'une suppression au moins partielle. La suppression a plus de chance d'avoir lieu pour les demandes de renseignements personnels que pour les demandes de documents généraux (87,3 pour 100 contre 38,1 pour 100). Au total, pour les deux genres de demandes, des frais de l'ordre de 7 735,76 \$ ont été supprimés.

Figure 1 / Règlement des demandes

plus grand nombre de demandes en 1988 et 1989 (Tableau 10). Quoique les demandes présentées à ces quatre organismes représentaient environ 61 pour 100 de toutes les demandes soumises aux organismes provinciaux, elles ne constituent qu'un peu moins de 19 pour 100 de la totalité des demandes reçues en 1990.

#### Délai d'exécution des demandes

La plupart des demandes ont été exécutées dans le délai de 30 jours imparté par la loi (Tableau 2), soit 65,3 pour 100 pour les demandes de documents généraux et 78,1 pour 100 pour les demandes de renseignements personnels. Seulement 2,8 pour 100 de toutes les demandes ont exigé un délai d'exécution d'au moins 121 jours. En 1990, ces chiffres présentent une légère diminution par rapport à 1988 et 1989.

Pour ce qui est du traitement des demandes, la plus grande catégorie de réponses à tous les types de demandes a donné lieu à une divulgation complète des renseignements par l'institution, à savoir, 45,9 pour 100 pour les documents généraux, 55,2 pour 100 pour les renseignements personnels et 49,7 pour 100 pour l'ensemble des demandes (Tableau 3 et Figure 1). Dans une autre tranche de 25,3 pour 100 des demandes, une partie au moins des renseignements a été divulguée.

Lorsqu'il y a eu refus de divulguer des renseignements, dans le cas des documents généraux, le motif le plus souvent invoqué a été l'exécution de la loi (445 demandes), conformément à l'article 14 de la loi (Tableau 4), tandis que dans le cas des demandes de renseignements personnels, l'exception la plus souvent invoquée a été celle visée à l'article 49 de la loi. Les autres exceptions les plus souvent invoquées ont été celle visée à l'article 21 pour les documents généraux (atteinte à la vie privée - 414 demandes) et, pour les renseignements personnels, celle visée à l'article 14 (exécution de la loi - 257 demandes).

En 1989, ce chiffre était de 67 pour 100, qui est supérieur au chiffre approximatif de 50 pour 100 en 1988 (Tableau 9). Dans une large mesure, la différence peut s'expliquer par un changement dans les proportions de demandes de documents généraux signalées par un seul et même ministère, celui du Revenu. En effet, au lieu de 170 demandes de documents généraux en 1988, le ministère du Revenu déclare avoir reçu en 1989, 3 044 demandes de documents généraux (total de l'année figurant au Tableau 10). En 1990, ce chiffre a chuté à 782. En outre, le nombre de demandes de renseignements personnels reçus par le ministère du Revenu qui était de 616 en 1988, est tombé à 88 en 1989 et est remonté en 1990 à 165.

La plupart des demandes présentées en 1990 l'ont été à des ministères plutôt qu'à des organismes. Le plus grand nombre de demandes a été déclaré par le ministère des Services correctionnels (988), suivi par le ministère du Revenu (947), le ministère des Services sociaux et communautaires (454) et le ministère des Services gouvernementaux (414). Ces quatre ministères comprenaient un peu plus de 68 pour 100 de la totalité des demandes reçues par les ministères, et environ 44 pour 100 de toutes les demandes.

Les trois premiers ministères susmentionnés ont également reçu le plus grand nombre de demandes au cours de 1988 et 1989 (Tableau 10). Toutefois, le nombre de demandes reçues par le ministère des Services gouvernementaux a augmenté de façon importante au cours des trois dernières années, passant de 104 en 1988 à 164 en 1989 et à 414 en 1990. En revanche, le nombre de demandes reçues par le ministère de la Santé a diminué progressivement au cours de cette même période, soit de 351 en 1988 et de 373 en 1989, à 183 en 1990.

Parmi les organismes provinciaux, c'est la Commission des accidents du travail qui a reçu le plus de demandes (377), suivie par l'Ontario Hydro (194), la Régie des alcools de l'Ontario (122) et les Archives publiques de l'Ontario (71). Ces quatre organismes ont également reçu le



qu'une fois que les données ont été rassemblées et préparées sous forme de tableau. Chaque fois que cela a été possible, les incohérences ont été résolues, mais, par suite des diverses interprétations possibles dans le calcul, il se peut que certaines incohérences demeurent. Si une incohérence ne peut être résolue, on suppose que les chiffres fournis par l'institution sont exacts.

Comme les données fluctuent naturellement d'une année à l'autre, il y aura des augmentations et des diminutions de chiffres qui sont le simple effet du hasard. La comparaison entre trois années consécutives risque d'être trompeuse et d'aboutir à des conclusions erronées. Cela est particulièrement vrai si ces trois années sont le début d'un nouveau processus alors que bien des activités et procédures sont encore en pleine évolution. C'est seulement après un certain nombre d'années «de croisière» que les tendances commencent à émerger et qu'il devient possible de faire des prévisions.

En tout, les institutions provinciales ont reçu 6 345 demandes en vertu de la loi, à savoir, 3 798 demandes de documents généraux, 2 493 demandes de renseignements personnels et 54 demandes de rectification (Tableau 1).

Selon les rapports des institutions, la plupart des demandes ont reçu une réponse en 1990 et un faible pourcentage seulement a été reporté à 1991. En ce qui concerne les demandes de documents généraux, 3 535 ont été exécutées et 551 reportées. Quant aux demandes de renseignements personnels, 2 434 ont été exécutées et 134 reportées, et pour ce qui est des demandes de rectification, 47 ont été exécutées et 6 reportées (Tableau 1).

Le pourcentage global de demandes exécutées, qui comprend les demandes reportées des années précédentes, était de 88,9 pour 100 en 1990. Ce chiffre soutient la comparaison avec le taux de 95,2 pour 100 en 1989 et de 89 pour 100 en 1988 (Tableau 9).

En 1990, les demandes de documents généraux constituaient environ 60 pour 100 de toutes les

tique présentée ci-dessous a été recueillie auprès d'organismes publics de l'Ontario, conformément à l'article 34 de la loi qui impose aux personnes responsables des institutions de présenter un rapport au commissaire sur les points suivants :

a) le nombre de demandes d'accès aux documents présentées à l'institution,

b) le nombre de refus de divulguer un document de la part de la personne responsable, les dispositions de la présente loi à l'appui des refus, ainsi que la fréquence de renvoi à chacune des dispositions invoquées,

c) le nombre d'appels de la décision de la personne responsable qui ont été interjetés à l'égard de chaque disposition de la présente loi,

d) la quantité de fins et d'usages non visés par les règlements énoncés aux alinéas 45 (d) et (e) pour lesquels des renseignements personnels sont divulgués,

e) le montant des frais perçus par l'institution aux termes de l'article 57,

f) les renseignements relatifs aux mesures prises par l'institution afin de réaliser les objets de la présente loi.

## Statistiques relatives aux demandes reçues par les ministères et les organismes

Chaque année, toutes les institutions visées par la Loi sur l'accès à l'information et la protection de la vie privée remettent au commissaire un rapport indiquant les demandes de documents généraux, de renseignements personnels et de rectification qu'elles ont reçues, ainsi que les mesures prises pour répondre à ces demandes.

Comme en 1988 et 1989, la totalité des institutions visées par la loi ont présenté un rapport d'activités en 1990. Une fois reçus par le commissaire, ces rapports ont fait l'objet d'une vérification pour voir s'il y a des incohérences internes, auquel cas, celles-ci ont été corrigées. Toutefois, certaines incohérences ne se sont manifestées



Le paragraphe 58 (2) de la loi exige que le commissaire entreprenne un examen global de la loi portant sur son efficacité à assurer l'accès à l'information et la protection de la vie privée, notamment :

- un résumé portant sur la nature des appels et sur les décisions définitives rendues sur ceux-ci,
- une évaluation du degré d'observation de la loi par les institutions,
- les recommandations du commissaire quant aux pratiques de certaines institutions et aux projets de modification de la loi et des règlements.

Ces divers points sont traités séparément dans la présente section du rapport annuel.

Le libelle du paragraphe 58 (2) laisse entendre que l'examen du commissaire ne doit pas nécessairement se limiter aux trois points énumérés ci-dessus. Au contraire, il faut que tous les points pertinents soient envisagés pour que le rapport annuel du commissaire renferme un examen global de la loi.

Pour mesurer l'efficacité d'une loi, il est souvent utile d'examiner les dispositions dans le contexte de ce qui l'a précédée.

Avant l'entrée en vigueur de la Loi de 1987 sur l'accès à l'information et la protection de la vie privée, le 1<sup>er</sup> janvier 1988, l'accès aux renseignements détenus par le gouvernement de l'Ontario était en grande partie laissé à la discrétion des personnes responsables. Il revenait à chaque ministre de décider si l'intérêt du public justifiait la communication de documents ou renseignements particuliers et, comme l'a constaté la Commission Williams, cette pratique débouchait sur des mesures incohérentes et prises en fonction de chaque cas particulier. Le public n'avait aucun droit sanctionné par la loi de demander, encore moins de recevoir, de l'information ayant trait au gouvernement. Par ailleurs, le serment de confidentialité des fonctionnaires contribuait encore à dissuader ces derniers de divulguer des docu-

ments dont l'Administration provinciale avait la garde ou le contrôle.

Cette tradition de secret officiel était partiellement compréhensible puisqu'elle faisait partie du patrimoine constitutionnel légué par la Grande-Bretagne. Il faut toutefois reconnaître qu'avant l'adoption de la loi en 1987, les principes du secret étaient profondément enracinés à tous les paliers du gouvernement de l'Ontario.

En adoptant la Loi de 1987 sur l'accès à l'information et la protection de la vie privée, l'Assemblée législative de l'Ontario rompt avec sa tradition et, pour la première fois, donne au public un droit garanti par la loi d'accès aux documents gouvernementaux et à ses propres renseignements personnels. Le droit d'accès matériel ne remplit toutefois pas à lui seul tous les objectifs de la loi. À long terme, le succès de la loi se mesurera en partie à la façon dont elle aura réussi à modifier les attitudes des fonctionnaires en tant que gardiens de l'information. L'efficacité de la loi doit donc se mesurer en termes qualitatifs autant que quantitatifs.

Dans les pages suivantes, on trouvera des données statistiques accompagnées d'autres documents d'interprétation. Le but visé est de permettre un examen global de la loi pendant sa troisième année d'application.

## Sommaire de la nature et de la résolution définitive des appels

L'alinéa 58 (2) a) de la loi enjoint le commissaire de résumer la nature des appels et les décisions définitives rendues à cet effet. Ce résumé vise à donner une vue d'ensemble du processus d'appel aux deux stades de la médiation et de l'enquête.

Pour situer l'analyse du processus d'appel dans son contexte, il faut commencer par se pencher sur les premières demandes d'accès aux documents générées ou aux renseignements personnels présentées aux divers ministères et organismes régis par la loi. La documentation statis-

Association canadienne des sciences géodésiques et cartographiques, Ontario College and University Library Association, Ontario Good Roads Association, Ontario Association of Property Standards Officers, Banque de Montréal, Association of Records Managers and Administrators, Ontario Urban Transit Association, Municipal Tax Collectors Association, Ontario Separate School Trustees Association, Association canadienne d'accès à l'information et de protection de la vie privée, Association de secrétaires et trésoriers municipaux de l'Ontario, Central Canada Radio and TV News Directors Association, Water Works Association, The Ontario Reporters Association, Edu-Law, Canadian Council of Administrative Tribunals, Société canadienne des relations publiques, Ontario Association of Chiefs of Police, Council on Government Ethics and Lobbying, Association des acheteurs publics de l'Ontario, Fédération canadienne des femmes diplômées des universités, Ontario Firefighters Association, Ontario Hydro, Riley Information Services, Radio-Canada, École de journalisme de Ryerson, Conference of Ontario Boards and Agencies et Association du Barreau canadien.

### Consultation téléphonique

Le bureau du commissaire a un numéro pour la région de Toronto et un numéro sans frais pour les personnes qui veulent obtenir des renseignements concernant l'application de la loi et les activités du bureau du commissaire.

Au cours de 1990, nous avons reçu en tout 2 434 appels téléphoniques concernant l'accès à l'information et la protection de la vie privée. La plupart des personnes, soit 81,7 pour 100, ont demandé des renseignements généraux au sujet de la loi, 3 pour 100 ont demandé des renseignements au sujet du processus d'appel, 0,8 pour 100 ont demandé une interprétation de la loi, 10,7 pour 100 craignaient pour la protection de leur vie privée et les derniers 3,8 pour 100 ont demandé des renseignements sur la procédure d'appel (c.-à-d. sur la façon de soumettre une demande en vertu de la loi).

bureau du commissaire considère qu'il faut que tous les organismes publics de l'Ontario soient assujettis à la loi, assurant ainsi une approche uniforme à l'accès à l'information et à la protection de la vie privée dans l'ensemble du secteur public de l'Ontario.

Enfin, le bureau du commissaire a élaboré des lignes directrices pour les institutions provinciales et municipales sur les renseignements qu'elles doivent fournir au commissaire pour obtenir l'autorisation pour la collecte indirecte de renseignements (c.-à-d. la collecte de renseignements personnels d'une source autre que le particulier concerné), conformément à l'alinéa 59 c) de la loi. Toutes les institutions provinciales ou municipales visées par la loi peuvent se procurer ces lignes directrices.

### Campagne de sensibilisation

Dans le cadre de son mandat, le bureau du commissaire veille à faire connaître la loi au grand public et à sensibiliser les particuliers et les institutions à leurs droits et responsabilités à l'égard de l'accès à l'information et de la protection de la vie privée.

L'une des principales activités de sa campagne de sensibilisation au cours de 1990 a consisté à la mise sur pied, avec la collaboration de la Direction de l'accès à l'information et de la protection de la vie privée du Conseil de gestion du gouvernement, de séances de formation destinées aux institutions municipales de la province en prévision de l'entrée en vigueur de la Loi de 1989 sur l'accès à l'information municipale et la protection de la vie privée.

Par ailleurs, le commissaire, les commissaires adjoints et d'autres membres du personnel se sont adressés à divers groupements intéressés au cours de l'année, afin de fournir des renseignements sur l'accès à l'information et la protection de la vie privée, notamment :

téléphoniques au cours d'enquêtes en vue de l'exécution de la loi.

Bell a prétendu que la divulgation de ces renseignements techniques constituerait une violation du principe de la confidentialité de ses ententes avec ses clients. Le bureau du commissaire, ainsi qu'un certain nombre d'autres intervenants, ont appuyé les arguments de Bell Canada devant le Conseil de la radiodiffusion et des télécommunications canadiennes (CRTC).

Le CRTC, dans son jugement, a appuyé notre position et entérine l'obligation de Bell Canada de garder les renseignements de ses clients confidentiels.

Le recoupement de fichiers est aujourd'hui reconnu dans plusieurs pays comme une sérieuse menace à la vie privée. Par recoupement de fichiers, on entend le recoupement de renseignements dans une base de données avec ceux d'une autre base de données afin de déceler les divergences importantes. Lorsqu'il y a recoupement de renseignements de cette façon, le bureau du commissaire considère qu'il y a un sérieux risque d'atteinte à la vie privée.

Aux États-Unis, le recoupement de fichiers est le plus souvent utilisé pour déceler les cas de fraudes, comme dans le cas de particuliers qui ont touché certaines prestations sociales, mais dont la déclaration d'impôt révèle un niveau de revenu qui leur interdit de bénéficier de l'aide sociale.

On ne connaît pas encore très bien la portée de l'utilisation de cette technique en Ontario, mais il est certain qu'elle est utilisée. En regard au danger éventuel du recoupement de fichiers pour la protection de la vie privée, le bureau du commissaire a rédigé un document d'orientation pour recommander au gouvernement de l'Ontario de mettre sur pied un groupe de travail pour déterminer l'étendue de l'utilisation de cette technique et a recommandé une méthode de réglementer le recoupement de fichiers pour éviter les atteintes éventuelles à la vie privée. (Ce rapport devait être présenté au Comité permanent de l'Assemblée législative dans le cadre de

sa révision triennale de la Loi de 1987 sur l'accès à l'information et la protection de la vie privée, concernant les institutions provinciales.)

Le bureau du commissaire a également rédigé un document sur l'affichage du numéro de celui qui fait un appel sur les nouveaux appareils de téléphone, qui a fait l'objet d'une audience devant le CRTC. Appelé communément l'«Afficheur», le système permet de visualiser sur l'écran du téléphone de la personne qui reçoit l'appel le numéro de téléphone de la personne qui fait l'appel. L'affichage se fait automatiquement, sans la connaissance ni le consentement de l'appelant. Sans la possibilité de bloquer l'affichage du numéro, cette nouvelle option est une sérieuse atteinte à la vie privée. Le bureau du commissaire estime que les clients doivent avoir la possibilité de bloquer la transmission de leur numéro et ce, sans frais.

Plusieurs intervenants se sont opposés à la demande de Bell Canada auprès du CRTC d'approuver son système d'affichage du numéro de téléphone, appuyant ainsi notre position selon laquelle les abonnés ne devraient pas avoir à acquitter les frais de 75 cents proposés par Bell pour bloquer la transmission de leur numéro. Dans sa première décision, le CRTC a entériné la position de Bell, quoiqu'il ait permis une seule exception pour les appels faits aux centres de secours-détresse pour les femmes, dans le cas desquels la transmission du numéro pourrait être bloquée sans frais. On a interjeté appel de cette décision et on prévoit que le CRTC rendra une décision définitive au début de 1991.

Au cours de l'année dernière, le bureau du commissaire a également fait connaître au ministre de la Santé son opinion sur la création de l'Agence ontarienne de lutte contre le cancer. Ce nouvel organisme serait le résultat de la fusion du Ontario Cancer Institute et de la Fondation ontarienne pour la recherche en cancérologie et le traitement du cancer. Du point de vue du bureau du commissaire, le principal point en litige est de savoir si le nouvel organisme serait une institution visée par la Loi de 1987 sur l'accès à l'information et la protection de la vie privée. Le



Au cours de 1990, le bureau du commissaire a également tenté de déterminer s'il fallait autoriser le Service ontarien de renseignements sur la criminalité, composé de forces policières locales de l'Ontario et de la Gendarmerie royale, à avoir un accès illimité aux renseignements techniques de Bell Canada, afin d'aider les forces policières à intercepter les conversations

session de 1991. Le ministre de la Santé a donné suite aux recommandations du bureau du commissaire en adoptant la Loi sur le contrôle des cartes Santé et des numéros de cartes Santé qui restreint l'usage du numéro de carte Santé aux programmes liés à la santé et à la recherche médicale et qui interdit au secteur privé d'en faire usage. Cette loi a été adoptée en première lecture en décembre 1990 et on prévoit qu'elle aura force de loi au début de la session de 1991.

Le bureau du commissaire a rédigé un document d'orientation sur les questions relatives au numéro de carte Santé dans lequel il signalait les dangers inhérents à l'utilisation de ce numéro à des fins autres que celles pour lesquelles il a été créé. Nous avons recommandé au ministre de la Santé de restreindre, par voie législative, l'utilisation du nouveau numéro aux programmes du secteur public ontarien dans le domaine de la santé et d'en interdire l'usage dans toutes les circonstances dans le secteur privé.

Le bureau du commissaire a rédigé un document client. Du point de vue de l'efficacité administrative, le nouveau numéro présente d'énormes avantages. Par contre, du point de vue de la protection de la vie privée, il soulève des risques certains, comme en témoigne l'utilisation qu'on a faite du numéro d'assurance sociale qui a dépassé le but visé à l'origine. Or, l'utilisation du numéro d'assurance sociale ne s'est pas limitée à certains programmes du secteur public fédéral, et le secteur privé au Canada a commencé à exiger systématiquement le numéro d'assurance sociale pour identifier un

nouveau numéro de carte Santé, qui remplace l'ancien numéro du RAMO. Un nouveau numéro est assigné à chaque Ontarien qui le garde sa vie durant. Le numéro de carte Santé devient donc un numéro d'identité propre à chaque individu.

En 1990, le bureau du commissaire s'est interrogé sur les conséquences de l'utilisation du Nous avons appris que le gouvernement étudie attentivement nos recommandations et qu'il annoncera leur mise en oeuvre au début de 1991. En 1990, le bureau du commissaire s'est interrogé sur les conséquences de l'utilisation du

Enfin, le bureau du commissaire a recommandé aux pouvoirs publics de ne pas instituer les tests obligatoires de dépistage des anticorps anti-VIH pour toutes raisons autres que pour les dons de sang, de tissu, de sperme et d'embryons, ainsi que les tests de dépistage universel dans le cadre d'études anonymes de séroépidémiologie. En troisième lieu, le rapport recommandait de modifier la Loi sur les sciences de la santé pour imposer aux médecins l'obligation de prévenir les personnes qui risquent de se voir transmettre le virus.

En deuxième lieu, il recommandait que les médecins soient les principaux intervenants chargés de communiquer avec les partenaires et d'offrir des services de consultation, l'objectif principal étant de favoriser la communication volontaire avec les partenaires par la personne qui est atteinte du virus. Les médecins pourraient déléguer cette responsabilité à un médecin-hygiéniste, s'ils ne souhaitent pas ou ne peuvent pas exercer cette fonction.

Tout d'abord, il a recommandé que quiconque souhaite subir un test de dépistage des anticorps anti-VIH puisse garder l'anonymat. Dans le droit fil de cette recommandation, le bureau du commissaire a demandé de ne pas exiger de rapports nominatifs dans le cas de résultats positifs de tests de dépistage du VIH et que ces deux recommandations fassent partie des modifications de la Loi sur la protection et la promotion de la santé.

Le rapport faisait quatre recommandations, partant du principe que la protection de la vie privée n'est pas incompatible avec la protection de la santé publique. Le rapport faisait quatre recommandations, partant du principe que la protection de la vie privée n'est pas incompatible avec la protection

## Elaboration des politiques

À l'heure actuelle, le bureau du commissaire passe en revue les pratiques et les procédures du service de la vérification pour s'assurer que toutes les enquêtes répondent aux normes appropriées d'équité. Il prévoit terminer cet examen au début de 1991.

L'élaboration des politiques a joué un rôle de plus en plus grand à mesure que s'est élargi le mandat du bureau du commissaire et que l'étude des nouvelles questions d'accès à l'information et de protection de la vie privée est devenue l'un des principaux éléments du rôle consultatif.

À mesure que de nouvelles technologies ont été mises au point, on soulève de sérieuses questions concernant les répercussions de ces technologies sur les principes d'accès à l'information et de protection de la vie privée de la loi. Or, la loi oblige le bureau du commissaire à étudier ces répercussions et à soumettre ses recommandations sur la façon de respecter les principes de la loi. Le bureau du commissaire considère que son rôle consultatif l'oblige à surveiller de près l'évolution technologique, afin d'évaluer ses répercussions sur les principes de la loi et d'émettre des recommandations aux divers décideurs.

Pour s'acquitter de ce rôle, le bureau du commissaire examine les questions relatives aux objets de la loi et soumet ses observations sur les conséquences des programmes et des lois proposées par l'État sur la protection de la vie privée. En 1990, le bureau du commissaire a élaboré diverses politiques. Sans doute que l'une des questions les plus difficiles concernant la protection de la vie privée a été celle qui portait sur la façon dont les organismes publics et privés doivent traiter des renseignements personnels liés au VIH ou au sida. À la suite du premier rapport, Le VIH et le sida en milieu de travail, le bureau du commissaire a publié en 1991 Le VIH et le SIDA : la protection de la vie privée, qui traite de questions plus larges relativement au VIH et au sida, comme les tests anonymes, les rapports non

elle peut avoir des répercussions à l'échelle du ministère. Dans un cas comme dans l'autre, les enquêteurs ont l'ordre de procéder à un examen exhaustif des pratiques et procédures de l'institution et de rendre compte de leurs conclusions au commissaire.

Le service de la vérification participe également à des examens systématiques de diverses institutions si l'on y a détecté des problèmes ou si un ministère ou organisme particulier reconnaît la nécessité d'évaluer et, peut-être, de modifier ses pratiques administratives et de gestion des documents en vue de se conformer aux dispositions de la loi. Comme la loi a imposé à tous les organismes publics de nouvelles normes et pratiques, de nombreux ministères et organismes sont en train d'examiner leurs procédures et leurs pratiques.

Les examens systématiques effectués par le service de la vérification sont axés sur des points comme les pratiques de conservation des documents, les systèmes de sécurité et les diverses pratiques de stockage, de récupération et de classement des renseignements personnels dont les diverses institutions ont la garde ou le contrôle.

Dans certains cas, une enquête ou un examen peut déboucher sur des recommandations du commissaire suggérant qu'une institution particulière modifie ses pratiques et procédures pour se conformer à la loi. Dans des cas plus graves, le commissaire peut ordonner à une institution de cesser un mode de collecte ou de détruire des fiches de renseignements personnels qui contreviennent à la loi. Si l'on envisage ce genre d'ordonnance, le paragraphe 59 b) de la loi exige que la personne responsable ait d'abord l'occasion de présenter ses arguments au commissaire.

Le service de la vérification est également chargé d'examiner les demandes faites au commissaire pour autoriser la collecte de renseignements personnels de sources autres que le particulier concerné. Cette pratique s'appelle la collecte indirecte de renseignements.

publics observent la loi dans son ensemble. La portée de cette responsabilité s'étend à des domaines comme le respect des exigences de rapports statistiques, le traitement en bonne et due forme des demandes de renseignements et toute une gamme de questions relatives à la gestion des documents.

Au second niveau, plus précis, le commissaire doit acquiescer à la conviction que les institutions se sont conformées aux articles de la loi qui visent à «protéger la vie privée des particuliers détenus par une institution, et accorder à ces particuliers un droit d'accès à ces renseignements».

La loi formule certaines exigences en matière de collecte, de classement et de sécurité des renseignements, de déclassement, d'usage, de divulgation, de déclassement et de sécurité des renseignements personnels. En outre, le Conseil de gestion du gouvernement est chargé de veiller à ce que soient en place des règlements qui fixent des normes administratives uniformes dans chacun des domaines susmentionnés.

Le service de la vérification du bureau du commissaire intervient dans les cas suivants : lorsque le bureau reçoit une plainte du public, lorsqu'un appel soulève des questions ayant trait à l'observation de la loi ou à la protection de la vie privée, ou lorsque le commissaire décide qu'une question particulière justifie une enquête.

Dans les cas où des citoyens déposent une plainte, un enquêteur prend contact avec le plaignant et les représentants de l'institution pour explorer les questions soulevées dans la plainte. On envoie ensuite au plaignant et à l'institution un rapport sur les conclusions et les recommandations résultant de l'enquête.

Les appels portent souvent sur un certain nombre de questions, outre le refus d'une demande d'accès. Ces questions peuvent comporter des craintes quant à l'observation de la loi, comme la façon dont les renseignements personnels peuvent être récupérés ou dans quelle mesure une institution se conforme à la loi. Une question touchant l'observation de la loi peut se limiter à un aspect précis du fonctionnement de l'institution comme

Un avis d'enquête est signifié à toutes les parties qui reçoivent, en même temps, une copie du rapport du responsable des appels. Les parties sont informées de leur droit de présenter leurs observations au commissaire relativement aux questions qui font l'objet de l'appel. Enfin, bien que le rapport du responsable des appels s'efforce de préciser tous les points pertinents en litige, il est clairement déclaré aux parties qu'elles sont libres de soulever tout autre point dans leurs observations.

Normalement, le commissaire exige des mémoires par écrit et les parties disposent d'un délai raisonnable pour rédiger leurs observations.

Les observations des parties sont examinées et analysées et, lorsque le commissaire dispose de toutes les données nécessaires, il rédige une ordonnance réglant toutes les questions soulevées par l'appel. Chaque partie et toute personne concernée reçoit une copie de l'ordonnance du commissaire. Celle-ci est également résumée et publiée dans le «Sommaire des appels» de l'organisme, qui est distribué à intervalles réguliers aux intéressés.

## Vérification de la conformité

La loi exige que le commissaire entreprenne un examen annuel de l'efficacité de la loi et évalue dans quelle mesure les organismes publics observent les dispositions de la loi. Une fois qu'il a terminé son examen, le commissaire est habilité à formuler des recommandations quant aux pratiques des différents ministères et organismes.

Pour s'acquitter de ces responsabilités, le commissaire doit enquêter, surveiller, estimer, évaluer, examiner et, plus généralement, superviser la façon dont les diverses institutions ont appliqué la loi et ses règlements.

La fonction de vérification qui incombe au commissaire se déroule à deux niveaux.

D'abord, le commissaire assume la responsabilité générale de veiller à ce que les organismes



## Le processus d'appel

Le rapport annuel de 1988 décrivait quelques-unes des caractéristiques inhérentes de la Loi de 1987 sur l'accès à l'information et la protection de la vie privée, en particulier le fait que la Loi sur l'exercice des compétences légales ne s'applique pas aux procédures d'appel du commissaire. Cela ne signifie toutefois pas que le commissaire a toute discrétion de déterminer le processus d'appel. L'article 52 de la loi énonce les pouvoirs du commissaire durant une enquête et renferme en outre plusieurs dispositions relatives aux droits procéduraux des personnes qui participent à une enquête.

Par exemple, toute personne qui participe à une enquête peut être représentée par un avocat ou par un mandataire. De même, l'appelant, la personne responsable ou toute autre personne concernée doivent se voir offrir l'occasion de présenter leurs observations au commissaire, même si la forme de ces observations est laissée à la discrétion de ce dernier.

L'article 52 stipule également que personne n'a le droit d'assister à la présentation faite par une autre personne, d'avoir accès aux observations ou de les commenter. Cette disposition sert notamment à éviter que soient divulgués au cours de ces observations des renseignements relatifs à des documents faisant l'objet de l'appel. L'article permet, en outre, que l'enquête se déroule à huis clos, à la discrétion du commissaire.

La loi donne au commissaire beaucoup de latitude pour concevoir des procédures, mais la conception de ces procédures est nécessairement modelée par la nature particulière des questions et des décisions que le commissaire doit prendre. Exception faite des droits procéduraux mentionnés ci-dessus et de l'exigence qu'après l'échec d'une médiation, l'appel débouche sur la phase de l'enquête, la loi est en grande partie muette quant à la façon dont doit se dérouler le processus d'appel et quant aux procédures que le commissaire devrait employer. Même si les procédures suivies durant le processus d'appel contiennent d'évoluer à mesure que le bureau du commis-

saire acquiert plus d'expérience, il reste qu'elles seront toujours inspirées par le principe sous-jacent de l'équité.

La description suivante donne les grandes lignes du processus d'appel, du stade de la médiation à celui de l'enquête et de l'ordonnance exécutoire.

Le paragraphe 50 (1) de la loi donne à la personne qui a présenté une demande d'accès à des documents généraux, d'accès à des renseignements personnels ou de rectification des renseignements personnels le droit d'interjeter appel devant le commissaire de toute décision de la personne responsable. Le tiers qui reçoit l'avis d'une demande d'accès à des documents généraux a également un droit d'appel au commissaire.

Une fois que la personne responsable a signifié sa décision, l'auteur de la demande dispose de 30 jours pour déposer un avis d'appel écrit auprès du commissaire. Après le dépôt de l'avis, la personne responsable de l'institution et toutes les parties concernées sont informées de l'avis d'appel.

La pratique du commissaire est de tenter une médiation pour tous les appels, bien que, dans des circonstances exceptionnelles, l'appel puisse déboucher directement sur une enquête. Le cas est attribué à un responsable des appels. Si le litige vise l'accès à un document particulier, le responsable des appels examine le document et tente d'arriver par médiation à un règlement entre les parties.

Le responsable des appels prend connaissance des questions en jeu dans l'appel et détermine les positions respectives des parties. Il entre en contact avec l'appelant et le représentant du gouvernement pour s'assurer qu'il n'y a pas de malentendus sur la nature des documents et des exceptions invoquées. Si un règlement n'est pas possible ou n'est que partiel, on passe à la phase de l'enquête. Le responsable des appels rédige un rapport qui rend compte des faits et des questions qui font l'objet de l'appel.

## Service des communications

Le service des communications est chargé des programmes de sensibilisation et d'information. Au cours de 1990, son personnel s'est occupé de la formation des responsables de l'administration locale en vue de l'entrée en vigueur de la Loi de 1989 sur l'accès à l'information municipale et la protection de la vie privée. Ces séances de formation ont été menées en collaboration avec le Conseil de gestion du gouvernement.

Le service est également chargé des relations avec les médias, de répondre aux questions du grand public, de rédiger de la documentation et il s'occupe des services en français.

Le service se compose d'un chef, d'un agent principal des communications, d'un agent des communications et d'un agent d'information.

## Service d'administration

Le service d'administration fournit divers services de soutien au bureau du commissaire, notamment la gestion des ressources humaines, les achats, la gestion des installations, la location et la sécurité des bureaux. Le service veille au recrutement de nouveaux employés pour tous les services et est chargé des finances du bureau, notamment la préparation, la gestion et le contrôle du budget.

Le service d'administration est également le principal contact du bureau avec les divers fonctionnaires de l'Assemblée législative et la Commission de régulation interne.

Le service se compose d'un chef, ainsi que de trois agents administratifs, de quatre employés de bureau et d'une réceptionniste.

Le service se compose d'un chef, de deux superviseurs, de trois vérificateurs de la conformité et de trois enquêteurs.

Planification stratégique et élaboration des politiques

Ce service coordonne la planification à longue échéance du bureau du commissaire et est chargé de questions relatives à l'élaboration des politiques qui surviennent :

- dans le cadre des conseils et des observations qu'il soumet concernant les répercussions sur la protection de la vie privée des dispositions législatives ou des programmes gouvernementaux proposés,

- à la suite de demandes internes de conseils sur des politiques,

- à la suite de la recherche menée aux fins de la loi,

- à la suite du processus de planification stratégique.

Le service se compose d'un chef et de deux agents de l'élaboration des politiques.

## Service juridique

Le contentieux fournit à l'organisme les conseils et autres services juridiques nécessaires. Ses fonctions comportent notamment :

- des conseils juridiques aux responsables des appels et au personnel du service de vérification sur diverses questions soulevées dans le cadre des appels, des enquêtes et des examens,

- l'analyse de lois analogues dans d'autres territoires de compétence,

- l'examen des décisions judiciaires pertinentes,

- la rédaction de commentaires sur des questions nouvelles en matière d'information et de protection de la vie privée,
- les conseils juridiques et le soutien à tous les services de l'organisme.

Le service se compose d'un directeur, d'un conseiller juridique principal, de quatre conseillers juridiques et d'une secrétaire.

## Service de la recherche et des systèmes

Le service de la recherche et des systèmes offre le soutien nécessaire pour divers aspects du mandat de l'organisme, c'est-à-dire dans le domaine de la recherche, de l'évaluation des programmes, des systèmes informatiques et de la bureautique.

Son personnel est chargé d'analyser et de soumettre des rapports sur les données relatives aux demandes et aux appels colligées conformément aux exigences de la loi. Il fournit également le soutien continu nécessaire pour la mise au point d'un système informatisé de repérage permettant aux institutions de repérer les demandes et de soumettre un rapport.

Le réseau informatique utilisé par l'ensemble du bureau du commissaire a été mis à niveau au cours de 1990 et on a acquis du matériel et des logiciels supplémentaires pour répondre à l'expansion du bureau. Le personnel est chargé de l'entretien et du soutien aux utilisateurs, ainsi que de la formation pour toutes les applications de la bureautique.

Le service se compose d'un chef, de trois chercheurs, d'un superviseur de la bureautique, d'un administrateur des systèmes et d'un programmeur-analyste des systèmes.

## Service des appels

Le service des appels est chargé d'instruire les appels déposés en vertu de la loi. Ces appels portent sur le refus d'accès à des documents généraux, à des renseignements sur des tiers ou à des renseignements personnels, ou au refus de corriger des renseignements personnels dont les pouvoirs publics ont la garde.

Le personnel de ce service traite directement avec les appelants et les institutions pour régler les appels par voie de médiation et pour s'occuper des appels qui font l'objet d'une enquête.

Le service se compose d'un directeur, de trois superviseurs, de douze responsables des appels, d'un greffier des appels, d'une secrétaire et d'un employé de bureau.

## Service de vérification

La loi oblige les institutions du gouvernement de l'Ontario à respecter certaines normes et pratiques visant à protéger l'intégrité des renseignements personnels dont elles ont la garde et le contrôle. Le service de vérification est chargé principalement de veiller à ce que les institutions provinciales se conforment aux diverses dispositions de la loi concernant la protection de la vie privée.

Il mène des enquêtes en cas de litige, soit dans le cadre d'un appel, soit à la suite d'une plainte d'un particulier. Il effectue également des examens et des analyses sur les pratiques de gestion de l'information et des diverses institutions relativement à la protection des renseignements personnels. Enfin, il surveille les politiques gouvernementales concernant la collecte et la disposition des documents personnels et fournit des conseils concernant les répercussions sur la protection de la vie privée des systèmes informatiques actuels ou proposés des diverses institutions.

## Comités

administratif est président des comités de gestion, du comité des appels et du comité de vérification et il est membre du comité de direction et du comité des politiques.

La réorganisation a entraîné la restructuring des comités actuels et la création de plusieurs nouveaux comités. En tout, le bureau du commissaire compte cinq comités : le comité de direction, le comité de gestion, le comité des politiques, le comité de vérification et le comité des appels.

Le comité de direction est l'organe décisionnel central de l'organisme et donne des directives aux divers comités chargés des politiques et des diverses fonctions.

Le comité de gestion est un organe d'échange de renseignements entre les divers chefs de service de notre organisme; il élabore des politiques administratives qu'il soumet au comité de direction.

Le comité des politiques se penche sur les questions de politique externe et établit les plans stratégiques et opérationnels de l'organisme.

Les comités de vérification et des appels sont également des organes décisionnels chargés des questions de politiques internes et des opérations relativement à ces fonctions clés du bureau du commissaire.

## Services

À la suite de la réorganisation, on a modifié le nombre et, dans certains cas, les fonctions des services du bureau du commissaire. Le cloisonnement des services reflète les diverses fonctions de notre bureau.



Comme nous l'avons mentionné dans notre rapport annuel de l'année dernière, à la fin de 1989, le bureau du commissaire à l'information et à la protection de la vie privée a effectué une révision de ses méthodes administratives et opérationnelles afin de déterminer les changements nécessaires pour lui permettre d'assumer son nouveau mandat en 1991 à l'égard des municipalités. Voici un sommaire des changements apportés à sa structure au cours de 1990.

La réorganisation avait comme objectif général de permettre au bureau du commissaire d'assumer de façon plus efficace ses nombreux mandats. Tous les services ont été touchés par ces changements qui partent des principes suivants :

- on peut arriver à une plus grande efficacité en créant des unités distinctes au sein de l'organisme chargé de certaines fonctions ou mandats du bureau du commissaire,
- on peut s'occuper des questions qui concernent plus d'un service et de toute coordination nécessaire par l'entremise de comités spécialisés.

## Commissaire

Au cours des deux premières années d'activités du bureau du commissaire et à mesure qu'il prenait de l'ampleur et assumait ses divers mandats à l'échelon provincial et municipal, il est devenu de plus en plus nécessaire que le commissaire délègue certaines responsabilités pour le fonctionnement quotidien de l'organisme. C'est pourquoi on a nommé un directeur administratif et deux commissaires adjoints au sein du comité de direction du bureau du commissaire et que l'on a assigné à chaque titulaire des fonctions et des rôles bien définis.

À la suite de ces changements, le commissaire peut faire office de directeur général de l'organisme, fixant les grandes orientations du bureau, consacrant plus de temps à la communication avec le grand public et les groupes concernés et

## Commissaires adjoints

Dans le cadre de la consolidation du rôle du commissaire, on a désigné deux commissaires adjoints à qui l'on a délégué diverses fonctions attribuées au commissaire par la loi. Le commissaire adjoint à l'information est saisi des appels du grand public et règle ces appels en rendant des ordonnances. Le commissaire adjoint à l'information est secondé par un responsable des enquêtes qui est détaché du service des appels pour une période d'un an.

Le commissaire adjoint à la protection de la vie privée est chargé notamment de faire enquête sur les plaintes et d'étudier des questions relatives à la protection de la vie privée, de prendre des décisions sur la destruction de banques de renseignements personnels ou la cessation de méthodes de collecte de renseignements et d'autoriser les institutions à recueillir des renseignements personnels de façon autre que directement du particulier concerné.

## Directeur administratif

Le directeur administratif est chargé de l'administration et du fonctionnement quotidiens du bureau du commissaire. Les sept services de l'organisme sont sous sa direction. Le directeur

respect des normes établies par la loi et ses règlements. S'il constate, par suite d'une enquête, que les pratiques d'un organisme public au chapitre des renseignements personnels contreviennent à la loi, le commissaire est habilité à enjoindre l'organisme de cesser un mode de collecte de renseignements ou de détruire des documents comportant des renseignements personnels.

La loi assigne aussi au commissaire un rôle consultatif. Chaque fois qu'un projet de loi ou de nouveaux programmes du gouvernement comportent des dispositions ayant des répercussions sur la protection de la vie privée, le commissaire peut soumettre ses observations.

L'expérience d'autres territoires de compétence indique que l'efficacité des droits octroyés dans le cadre des lois sur l'accès à l'information et la protection de la vie privée est directement liée à la connaissance de ces droits de la part de la population. Pour faire en sorte que la population soit consciente de ses droits, le commissaire de l'Ontario est autorisé à mettre en oeuvre des programmes d'information à l'intention du public et à fournir des renseignements sur le rôle et les activités du commissaire.

Le commissaire peut également procéder à des recherches sur toute matière liée aux objets de la loi. Comme nous vivons dans une société de l'information, des technologies innovatrices continuent d'élargir le rôle de l'information considérée comme un moyen de prise de décision dans les domaines commercial, scientifique et social. Bien que ce genre de progrès technologique comporte des avantages largement reconnus, la loi reconnaît la nécessité de surveiller et d'évaluer minutieusement les répercussions que ces changements auront sur la vie privée et l'accès à l'information.

Enfin, la loi reconnaît la valeur de la participation active du public à l'application des droits garantis par la loi en permettant aux citoyens de déposer des plaintes et d'exprimer des opinions quant à l'application de la loi.

À partir d'un ensemble de principes énoncés par la Commission de l'accès à l'information et de la protection de la vie privée (la Commission Williams) au début des années 80, les notions d'accès à l'information détenue par les pouvoirs publics et de protection de la vie privée sont maintenant codifiées dans la *Loi de 1987 sur l'accès à l'information et la protection de la vie privée* de l'Ontario. Au premier plan de ces principes se situe l'intégration des deux notions dans une seule et même loi.

L'un des défis lancés au commissaire à l'information et à la protection de la vie privée consiste à distinguer ces deux notions et à déterminer, le cas échéant, le juste équilibre entre le droit du grand public à l'information et le droit du particulier à la protection du caractère confidentiel de ses renseignements personnels.

La loi exige que les organismes publics prennent les premières décisions quant à l'application pertinente de la loi. Elle reconnaît, toutefois, que ces décisions sont parfois difficiles et complexes et que, selon les termes de la loi, « les décisions relatives à la divulgation de l'information ayant trait au gouvernement devraient faire l'objet d'un examen indépendant du gouvernement ». La loi confie cette responsabilité au commissaire, et, pour que son indépendance soit bien assurée, le commissaire est un fonctionnaire de l'Assemblée législative dont il relève directement.

L'une des fonctions essentielles du commissaire est de recevoir et d'étudier les appels de citoyens à qui l'on a refusé l'accès, soit à des documents généraux du gouvernement de l'Ontario, soit à leurs propres renseignements personnels. Toute décision prise par une personne responsable dans le cadre de la loi peut faire l'objet d'un appel devant le commissaire.

La loi reconnaît également que la protection adéquate de la vie privée dépend de la volonté des institutions publiques de se conformer à certaines normes en matière de collecte, de stockage, d'utilisation, de communication et de déclassification éventuel des renseignements personnels. Il incombe au commissaire de veiller au



nière, nous avons publié Le VIH et le SIDA : la protection de la vie privée, comportant nos recommandations concernant les tests anonymes, les rapports non nominatifs et la communication avec les partenaires. Nous sommes fiers de constater que le gouvernement a aujourd'hui retenu nos recommandations.

Nous avons également fait part aux pouvoirs publics de notre point de vue concernant leur utilisation proposée du nouveau numéro de carte Santé de l'Ontario qui remplace l'ancien numéro du RAMO. Le bureau du commissaire a réussi à faire reconnaître aux pouvoirs publics le bien-fondé d'une loi pour régler l'utilisation du nouveau numéro de carte Santé dans les secteurs publics et privés. Le ministère de la Santé a fait siennes nos préoccupations concernant la protection de la vie privée et a introduit la Loi sur le contrôle des cartes Santé et des numéros des cartes Santé à cette fin.

En 1991, nous avons l'intention d'étudier avec le gouvernement provincial le dossier de l'échange de renseignements transfrontalier sur lequel se penche à l'heure actuelle la communauté européenne et de porter une attention plus grande à la protection de la vie privée en milieu de travail. Nous nous proposons également de contrôler attentivement l'application de la nouvelle Loi de 1989 sur l'accès à l'information municipale et les problèmes particuliers dans ce domaine qui ne manqueront sans doute de survenir.

En raison de l'entrée en vigueur de la loi visant les municipalités le 1<sup>er</sup> janvier 1991 et les activités en cours liées à l'application de la loi visant les institutions provinciales, il est évident et essentiel que ceux d'entre nous qui doivent régler les questions d'accès à l'information et de protection de la vie privée vouent un respect indéfectible aux principes de ces deux notions. Les difficultés auxquelles nous devons faire face sont grandes, mais nous sommes emballés par les possibilités de favoriser une plus grande accessibilité des pouvoirs publics et la protection de la vie privée, qui nous permettront d'assumer nos responsabilités dans l'année à venir.

# MESSAGE DU COMITÉ DE DIRECTION

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la protection de la vie privée avec une sensibilité et une compétence qui ne cessent d'augmenter. Le bureau du commissaire est heureux de constater le pourcentage très élevé d'appels qui sont maintenant réglés par la voie de la médiation. Il félicite les institutions du niveau de collaboration qu'elles lui accordent et de leur respect des principes de la loi.

Mentionnons également l'excellente collaboration obtenue de la part du personnel de la Direction de l'accès à l'information et de la protection de la vie privée du Conseil de gestion du gouvernement. Par ailleurs, le maintien de nos excellentes rapports avec bon nombre de coordinateurs à l'information et à la protection de la vie privée dans toutes les institutions provinciales a été un élément essentiel du succès remporté par le programme d'accès à l'information et de protection de la vie privée de la province.

Au cours de 1990, le bureau du commissaire a réalisé un progrès marquant dans de nombreux domaines de l'accès à l'information et de la protection de la vie privée. De concert avec le Conseil de gestion du gouvernement, nous avons pu fournir un programme de formation à bon nombre de municipalités et de conseils scolaires de la province, pour leur permettre de se préparer en vue de l'adoption de la loi visant les municipalités.

Nous avons également participé à la mise sur pied de la révision triennale de la loi visant les institutions provinciales effectuée par le Comité permanent de l'Assemblée législative. Nous avons consacré beaucoup de temps et d'efforts envers la recherche nécessaire afin d'élaborer des propositions de modification de la loi pour le comité permanent. De plus, nous avons préparé de la documentation sur diverses questions et un certain nombre de documents d'orientation et de recherche.

En 1990, nous avons atteint notre objectif de mieux faire connaître les questions liées à la protection de la vie privée. Au cours de l'année der-

Depuis l'entrée en vigueur il y a trois ans de la Loi de 1987 sur l'accès à l'information et la protection de la vie privée (la loi) de l'Ontario, il y a eu certains changements au sein du gouvernement et du bureau du commissaire à l'information et à la protection de la vie privée (le bureau du commissaire).

L'un des changements importants visait la structure du bureau du commissaire. À l'automne de 1989, celui-ci a réexaminé sa structure pour s'assurer que ses méthodes administratives et opérationnelles lui permettaient de répondre efficacement aux demandes accrues résultant de l'application aux institutions municipales de la Loi de 1989 sur l'accès à l'information municipale et la protection de la vie privée le 1<sup>er</sup> janvier 1991.

Le présent rapport annuel fait état, plus loin, de la réorganisation du bureau qui a eu lieu au début de 1990. Ces changements permettront au bureau du commissaire de respecter de façon efficace et efficiente ses nombreux mandats vis-à-vis du gouvernement provincial et de l'administration locale.

Il y a eu un autre changement important au bureau du commissaire, soit le départ en avril 1990 du premier commissaire à l'information et à la protection de la vie privée, M. Sidney B. Linden. M. Linden, qui est maintenant juge en chef de la Cour de justice de l'Ontario (division provinciale), a présidé à la fondation du bureau du commissaire et a contribué à l'établissement de rapports étroits avec les ministères, organismes, conseils ou commissions de la province. Ses efforts ont contribué sensiblement à l'évolution du bureau du commissaire qui est devenu un organisme bien établi et riche d'expérience.

En outre, le bureau du commissaire a pu remarquer au cours des trois dernières années une évolution dans la façon dont les ministères et autres organismes publics assument leurs obligations en vertu de la loi. Ces organismes examinent les questions de l'accès à l'information et de



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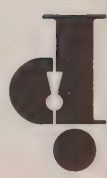






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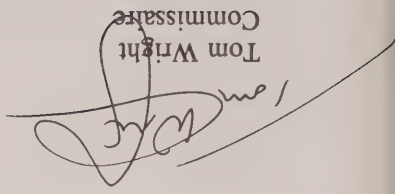
Le 18 juin 1991

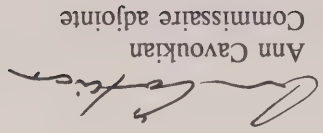
L'honorable David Warner, député  
Président de l'Assemblée législative

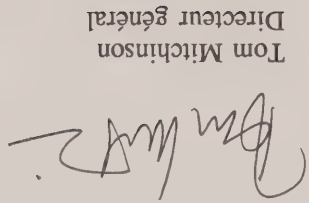
Monsieur le Président,

Conformément à l'article 58 de la Loi sur l'accès à l'information et la protection de la vie privée, dans sa version modifiée, je vous présente le rapport annuel du commissaire à l'information et à la protection de la vie privée de l'Ontario pour l'exercice se terminant le 31 décembre 1990.

Veuillez agréer, Monsieur le Président, l'expression de mes sentiments les meilleurs.

  
Tom Wright  
Commissaire

  
Ann Cavoukian  
Commissaire adjointe

  
Tom Mitchinson  
Directeur général

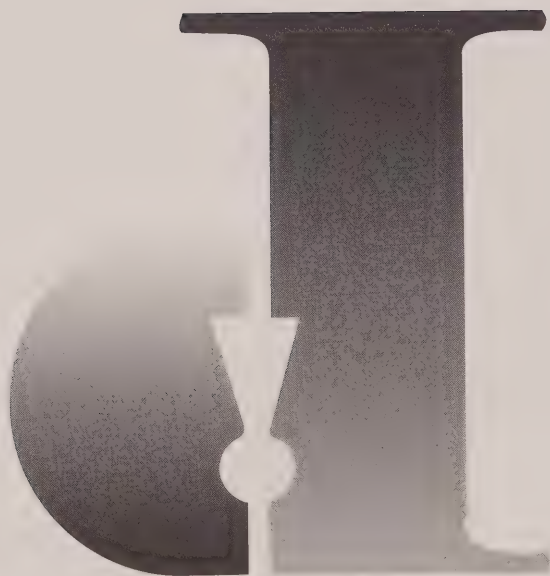
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